# LEGAL PEDAGOGY AND RESEARCH METHODOLOGY

EDITORS

V. K. AHUJA

DEBASIS PODDAR

NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

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## FOREWORD

In contemporary times, with the digitalization of publication enterprises across the board by means of online publication, academia has witnessed a gradual surge in the publication of reference literature, and legal academia is no exception to this end. The increase in publication occurred in both quality and quantity, and as a result, the tryst with knowledge practice is being experienced in previously unpopular sectors that have been barely or never investigated. Pedagogy is a classic instance of such no-go zones vis-à-vis publication, more so in professional legal education. There is no organised earlier literature that I can recall that goes in-depth and in detail into the mechanisms and methods of professional legal education in India. The upcoming book "Legal Pedagogy and Research Methodology," edited by Prof. (Dr.) V. K. Ahuja and Prof. (Dr.) Debasis Poddar, will be published by National Law University and Judicial Academy, Assam, and is deserving of praise as the first effort of its kind to advance professional legal education in India.

Besides legal pedagogy, as per the nomenclature of this forthcoming book, research methodology added value to this project as another integral part of this proposed book. In the contemporary knowledge profession, research practice is meant for the production of knowledge, and collegiate practice is meant for the dissemination of knowledge so produced, followed by research on the basis of experience in the course of dissemination. Again, experience from collegiate practice is engaged to add value to new knowledge. A circular model is thereby created to facilitate

knowledge professions. Thus, when viewed as a whole, education and research resemble the two wheels of a chariot; as the oft-quoted adage goes, one cannot advance without the other. 'Research Methodology' (Part II) in this book is illuminating regarding the legal research discourse in India despite having a very small number of writers and chapters.

In combination with pedagogy and research methodology, taken together, this forthcoming book ought to find a place of pride in all the law libraries of higher education institutions engaged in professional legal education. Besides, the cost-free availability of the complete manuscript on the official website of the publisher—just a click away—should increase the readership count; thereby facilitate more frequent citations of authors and chapters elsewhere. The National Law University and Judicial Academy, Assam, is a social enterprise that aims to ensure the creation and spread of legal information. I am sure legal academics will find this book valuable and would prefer to maintain a copy of it on their bookshelf for quick access to the material. Last but not least, I place on record the pain endured by editors to bring this book to light. I would also like to take this chance to thank the two editors for their work in producing a fantastic book that will be highly beneficial to the legal community.

**[Prof. (Dr.) Manoj Kumar Sinha]**
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## PREFACE

This publication project was undertaken as the maiden book in the forthcoming series of books as in-house reference literature; generated primarily by our faculty colleagues under the auspices of National Law University and Judicial Academy, Assam. Indeed, this book got little delayed to be published. The reasoning is but positive and the same lies in response from academia in bulk; something beyond reasonable expectations of the editorial team.

National Law University and Judicial Academy, Assam (known as NLUJA, Assam) has been established by Government of Assam by way of enactment of the National Law School and Judicial Academy, Assam Act, 2009 (Assam Act No. XXV of 2009). The word 'School' was replaced by the word 'University' by the National Law School and Judicial Academy, Assam (Amendment) Act, 2012. The Hon'ble Chief Justice of Gauhati High Court is the Chancellor of the University. NLUJAA promotes and makes available modern legal education and research facilities to students and researchers drawn from across the country, including the North-East India, irrespective of socio-economic, ethnic, religious and cultural background.

This book was initially conceptualized by the editors toward capacity-building pedagogic skill in next-generation faculty cadre of professional legal education joining in recent times, thereby fix vacuum- if not void- vis-à-vis knowhow in the classroom delivery; by courtesy, lack of lived experience about dies; on and off alike. Subsequently, while proceeding with the forthcoming book project, the editors came across newer practices proposed by the authors themselves; thereby turn the contemporary legal pedagogy creative and constructive in course of professional education discourse. For instance, client counselling, clinical education, trial advocacy, etc., to name few among them, add value to this volume for sure.

Also, these editors reached seasoned researchers to receive minute technical knowhow vis-à-vis classroom pedagogy in professional legal education. Pedagogy apart, Part II of this book with the title 'Research Methodology' included several tributaries to understand and appreciate academic integrity, means and methods, tools and techniques, etc., to bring in a transformation in an otherwise unwise universe of knowledge practice; more so in legal research.

The editors are confident that this forthcoming book ought to fill-in the gap vis-à-vis study materials for Faculty Development Programmes in the Law Schools around. Also, the same resembles a bookmark to plan book publication on similar literature in skill development vis-à-vis professional legal education in time ahead. Also, the same is applicable to book publication on legal research.

**October 1, 2023** **Editors**

## ACKNOWLEDGEMENT

The editorial team hereby extends sincere thanks to learned contributors and reviewers for sparing their precious work hours from otherwise tightly occupied schedule; followed by painstaking exercises endured toward time-bound submission and compliance to the series of editorial requests for improvement of manuscript. Besides, the editors place on record appreciation for the proactive administrative patronage extended by Mr. Gunajit Roy Choudhury, Registrar, and Dr. Nandarani Choudhury, Assistant Registrar (Academic), of this University, toward publication of this book. Last yet not least, the editors hereby acknowledge contribution of Mr. Satyajit Deb, Systems Operator of this University, in getting this book published in professional format.

## DISCLAIMER

The authors carry whole and sole liability for all statements written in their respective chapters. Both editors and members of the editorial committee hereby remain indemnified and cannot be held jointly and severally liable anyway.

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# INTRODUCTION

Unlike sundry pre-planned publication projects, the gestation of this book lies in incidental conversation between two editors about the acute want of reference literature on the delivery of cutting-edge research and publication in academic legal education, classroom pedagogy in professional legal education, etc. Engaged in academics for decades, out of lived experience, editors were well aware of systemic issues and challenges before those engaged in contemporary knowledge profession. The mainstream legal education being primarily a trajectory of professional education, the same remains devoid of academics and in proximity of technical education; with focus on skill development for professional practice inside and outside the court. Even for law practice, both research and classroom pedagogy fall short of standard in any count; of quality and quantity alike. The gap prompted us address this vacuum; thereby extend *pro bono* academic services out of professional social responsibility.

The forthcoming title, "Legal Pedagogy and Research Methodology", deserves mention of holistic reasoning behind. We partitioned this book in two areas of concern: (i) legal pedagogy, and (ii) research methodology. Indeed, these two areas remain otherwise independent yet interdependent with myriad means and methods across legal academics. On one side, professional education suffers from the shortage of training of trainers. Despite proactive patronage with state-funded orientation programme, followed by refresher course, by the regulatory agency, a fundamental question still reigns: who is eligible to train whom? Whether or how far seniority alone may be taken as insignia of wisdom exposes moot points. For instance, clinical courses, introduced to the curriculum of professional legal education by the Bar Council of India may turn the table upside down since new-generation law graduates- with focus on systematic litigation internship to their credit- may

often than not do wonder and deserve recognition and reward to their merit; something commonplace nowadays. These trainings of trainers, therefore, ought to get graduated to reign of edge; rather than reign of age alone. Accordingly, we went inclusive enough to encourage the newer generation; thereby engage ourselves to learn the new-generation wisdom from the new-generation graduates in ever-changing world. We thereby followed legacy of the oft-quoted literary classic:

> *"We must learn to reawaken and keep ourselves awake, not by mechanical aids, but by an infinite expectation of the dawn, which does not forsake us in our soundest sleep. I know of no more encouraging fact than the unquestionable ability of man to elevate his life by a conscious endeavour."*
>
> - *Henry David Thoreau, Walden (1854).*

Here lies another editorial intent of this book. At bottom, besides formal orientation of the next-generation pedagogues by predecessors and vice versa, orientation of the readership by the authorship and vice versa (with feedback), the editors engaged another agenda to orient themselves by this exercise; thereby derived dividends by means of the editorial exercise. To the best of our knowledge, this book is a first-of-its-kind enterprise in mainstreaming the professional legal pedagogy. While the pedagogues possess basic knowhow: 'what to teach', the editors brought in avant-garde knowhow: 'how to teach'.

On other side, Part II is meant to address an altogether different concern. While the mainstream legal education is primary concerned with professional education, the Bar Council (regulatory agency for professional legal education) places priority to the undergraduate studies by default. Consequently, the postgraduate studies remain deprived of regulatory focus by the University Grants Commission (regulatory agency for

higher education), since the same was by and large manned by those in general education; with little knowhow in law as another potential academic knowledge domain in larger social studies discipline. Due to decadence in postgraduate studies in law, legal research forever remained in backseat of the knowledge profession. In Part II, the editors put effort to bring in reference literature on several critical crossroads of research methodology. While researchers often than not possess skill in the substantive knowhow: what to research, the editorial intent is to bring in procedural knowhow: how to research; thereby add value to research methodology library; more so in the domain of juridical research methodology, a cross-disciplinary knowledge domain- something included yet not limited to the professional knowledge domain- after hitherto inclusive editorial policy, as mentioned meanwhile.

Taken together, this book is intended to get a minute introspection initiated to map the knowledge of ignorance. For instance, more fundamental domains of technical knowhow in intellectual technology went absent in Part II. Scepticism looms large that these editors could not reach the authors. In due course of reverse argumentation, despite willingness, inaccessibility to the authors but questions (read contests) the very existence of authorship these editors look for. With candid confession, let us present all otherwise wise chapters available with us to bring in the stated mission to fruition. We are confident that gaps identified in this book facilitate readership trace the ignorance of knowledge in legal research methodology; thereby fill in the gap in time ahead.

**Editors**

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# PART I

# LEGAL PEDAGOGY

## Chapter - 1

## LEGAL EDUCATION – POST-MODERNIST PERSPECTIVES

*A. Lakshminath*[*]
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"*By three methods we may learn wisdom: - First, by reflection, which is noblest, second by imitation which is easiest; and third by experience, which is the bitterest*"- *Confucius.*

### I. Introduction

It is surprising that in spite of all the harangue and pious exhortations, most of which are a ritualistic exercise in rhetoric, the musty rubbish and an anachronism of a now ill-fit and outlandish system of education continues to visit their syndrome effects as hangovers of a Macaulay's colonial past on present endeavors at streamlining the pace of reforms in education.

The age of positive jurisprudence having passed we are now persuaded by the intellectually liberating potential of inter-disciplinarity. The most intellectual contributions relate to emergent challenges of globalization and the 'new' World order, the revival of Kantian 'law of people', a Benthamite "general" jurisprudence, a Derridean cosmopolitan 'politics of friendship' and so on.

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There was and still persistence of a strong bias in the British Professors against legal education because of an anti-academic bias in the legal profession, some perhaps in the medieval period, established as the alter ego of the Profession and such inherent developments were injected into the Indian Legal System.

The politics of legal education and the economics of law practice should be subjected to academic scrutiny if the legal profession in India has to be saved. Justice must become central to the law curriculum and community-based learning must give the desired value orientation in the making of a lawyer. Increased recognition of the limitations inherent in the juridical ideology traditionally perpetuated within the legal education has led to widespread modification of the law school curriculum in recent years. While analysis of law as a parasitic discipline celebrates a marked move away from doctrinarism and towards more pluralist approaches in legal education to the extent that the critical courses such as law, gender and poverty etc. are restricted constantly in the minds of both students and academics to the peripheral sphere of the non-black letter and therefore the less legal, they do indeed run the perpetual risk of reinforcing rather than challenging the legitimacy of dominant juridical ideology.

**II. Legal Education and Ideology**

Education is a means by which knowledge is transmitted and skills developed. Beneath what appears to be a relatively simple statement exists a complex matrix of pedagogic and cultural practices that inform, shape and give effect to what information is chosen and how it is understood, transmitted and received. University education in its widest sense is a whole-person process, where the focus is not so much on the teaching and learning of specific skills or training as it is on the cultivation of personal autonomy, intellectual independence and the development of life-long critical perspectives. At the very least, university education

ought to strive to prepare people for a changing world by promoting the intellectual and analytical skills that will assist them in assessing choices about their lives. Thus, the influence of education extends far beyond the classroom to all aspects of a person's life.

Legal Education has long been the subject of inquiry into its purpose and methods and the landscape of legal pedagogy reflect the diversity of interest it has generated. Recently there has been a focus on legal education within a wider knowledge context, examining the teaching and learning of law as part of the overall project of developing analytical and conceptual skills as exemplified in the whole-person process of University education.

Law exists not only as a form of concrete expression found in statutes and common law and as commentary in legal texts and journal articles. Law may be thought of as the expression of the approved rules of conduct which have been 'agreed upon in the proper manner by the proper persons in power. What counts as the 'proper' mode of law-creation is, of course, itself a matter in the control of the powerful'. Included in this definition of law is judge-made law, since judges and the judiciary are 'institutionalized as executive agents of social power'. In that they serve as adjudicators and arbitrators of legal rules and disputes. What is significant about law as an expression of the social rules of conduct is that it is a joint expression of power and ideology.

The crucial question about the origins of law always relate to the power bloc behind the legislation; the nature of the problem this bloc wants to solve, the ideologies in which this problem is perceived and understood, and the political opposition to the proposed legislation. Law is a hybrid phenomenon of politics and ideology – a politico-ideological artefact'. The same subconscious assumptions about the world and the way it should influence how law lecturers understand law and in turn teach it to students.

Teaching is not the value-free transmission of ready-made knowledge; rather, because it is imbued with the teacher's own experience, perspectives and understanding, it is the creation of particular form of knowledge.

Education – 'as a socio-cultural structure and process is, in all its various forms, intimately connected with the production and dissemination of foundational knowledge and therefore with the re-creation and reproduction of … differential valuations and hierarchies of knowledge…. Education must be understood as a social process that is steeped in cultural signifiers and is neither objective nor content-neutral.' The material we learn by, understand by and teach by is affected by our own ideological and pedagogic influences and assumptions, just as our students are similarly affected. Once we are aware of these phenomena, they can become powerful teaching and learning tools and resources that allow us more closely to examine, engage and connect with people and information and to become a part of rather than apart from the world around us. Moreover, in teaching law in a cross- cultural and cross-experiential fashions we make it matter to all our students. This, ultimately, reaches to the fundamental principles of higher education. We want to ensure that students develop those analytical, conceptual and other intellectual skills which will enable them to make better choices in their lives, to become better citizens and to determine their place in the world and their relationships within it. At the same time, we are also committed to legal education that is professionally as well as socially and culturally relevant.

These goals are not incompatible. Indeed, they embrace the idea that law be taught within the context of the society in which it operates. It is not difficult to contemplate teaching law which integrates differing perspectives and thereby challenges the perception of law as a single monolithic expression of social rules. In doing so we also more accurately reflect the reality our students

experience. Additionally, we also grant them a greater opportunity to take responsibility for their own learning using material and information that is more meaningful and relevant to them. University and legal education should be intellectually stimulating, horizon- expanding and participatory: something that matters for everyone.

**III. Legal Education and Unified Bar - Indian Bar Committee, 1923**

Munshi Ishwar Saran moved in February, 1921, a resolution in the Legislative Assembly recommending legislation "with a view to create an Indian Bar so as to remove all distinctions enforced by statute or by practice between Barristers and Vakils." The mover of the resolution not only laid emphasis upon the removal of the distinctions between Barristers and Vakils but also advocated the Constitution of a recognised body consisting exclusively of lawyers in India to provide for legal education, to exercise disciplinary control over the Bar and to deal with all other matters relating to the legal profession. In response to the pressures thus generated, the Government of India in 1923 appointed the Indian Bar Committee, popularly known as the Chamier Committee, under the Chairmanship of Sir Edward Chamier, a retired Chief Justice of the Patna High Court.

The Committee proposed that a Bar Council should have power to make rules subject to the approval of the High Court concerned in respect of such matters as inter alia: (a) legal education; (b) professional conduct of Advocates etc., and (c) any other matter prescribed by the High Court.

**IV. The Indian Bar Councils Act, 1926**

To give effect to the recommendations of the Chamier Committee to some extent, the Central Legislature enacted the

Indian Bar Councils Act, 1926. A Bar Council could, with the previous consent of the High Court make rules for such matters inter alia as the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council. The Commission also favoured division of the Bar into Senior Advocates and Advocates on a voluntary basis, "the seniors being, by reason of their status, precluded from accepting certain types of work and from appearing in cases unless briefed with a junior". An advantage of the system would be to put some work in the hands of the junior members of the Bar. The Bar Council of India has been entrusted iner alia with the following important functions: 1) standards of professional conduct and etiquette for Advocates; 2) to safeguard the rights, privileges and interests of Advocates; 3) to promote legal education, and 4) to lay down standards of legal education in consultation with the Universities imparting such education and the State Bar Councils; 5) to recognize Universities whose degrees in law shall qualify for enrolment as an Advocate and 6) to visit and inspect the Universities for that purpose; 7) to exercise general supervision and control over State Bar Councils, 8) to promote and support law reform; and 9) to organize legal aid to the poor.

The Bar Council of India regulates the content, syllabi, duration of the law degree. Subject to the provisions made by the Bar Council, each University can lay down its own provisions and regulations concerning the law degree. To perform its functions regarding legal education it is assisted by a Legal Education Committee consisting of ten members, five being members of the Bar Council of India, and five co-opted by the Council who are not members thereof. The idea is that the co-opted members would mainly be law teachers.

**V. Legal Education – Prologue**

The purpose of legal education is twofold. One view favoured legal education should be treated as a part of liberal education: the other view was in favour of treating legal education as professional education. As professional education, legal education equips law students for filling different roles in society, and discharging various law jobs, the range and scope of which are always expanding in the modern democratic society, e.g., policy-makers, administrators, lawyers, law teachers, industrial entrepreneurs etc. Accordingly, it is realized in modern India that legal education ought to have breadth, depth and width. (For details see Madras High Court decision AIR 2017 Madras (4) page.4)

Law, legal education and development have become inter-related concepts in modern developing societies which are struggling to develop into social welfare states and are seeking to ameliorate the socio-economic condition of the people by peaceful means. The same is true of India. It is the crucial function of legal education to produce lawyers with a social vision in a developing country like India.

An informative critique focusing attention on the role of the judiciary in reconciling the law with changing social needs has been written by Arthur Von Mehren wherein he emphasizes the role of the legal profession and an enlightened legal education as invaluable aids to the judicial adaptation of law to societal needs. Mehren's definition of the judicial process is interesting for its candid admission that judges do make new rules and principles in adapting rules of law as social circumstances permit.

What determines the quality of judicial process in any given society?

In examining this question Mehren calls attention to the following four elements:

1. The position in sociological terms of law and the legal profession in a given society;

2. The approaches and habits of thought that are encouraged by the courts in their social defence of private and public rights;

3. The quality of legal education, the kind of man and mind it produces; and

4. The opportunities in terms of service and economic reward open to men of legal profession.

The acceptance enjoyed by the judicial process in any society depends mostly upon the historic role played by that process in the shaping of lego-social institutions in that society. With the advent of common law and the judicial institutions employing common-law techniques, courts in India have played undeniably an important role in moulding legal concepts and institutions according to changing social circumstances. With a written Constitution providing for entrenchment of basic human rights and for division of legislative and administrative powers in a federal context, the place for judicial review has gained greatly in value and importance. The prestigious position of the judiciary in this respect has also focused attention on greater creative involvement of judiciary in law reform and upon social accountability of judicial process for the said reform. Greater the creative opportunity for judges to make adaptations and innovations in the law, greater is the scope for legal profession to participate in this judicial law-making process for, in the adversary system of adjudication judicial approach to law-reform is to a

considerable extent determined by the extent of fruitful interaction judges have with counsel.

According to Professor Arthur von Mehren, before Independence, the Indian legal profession and legal education had not developed "a rationally functional approach to the problems of law and legal order" and the "Indian legal education inevitably tended to evolve in patterns that emphasized rote memory. To impart information – not critical understanding – remained the goal of legal education". Consequently, when India gained independence, "its legal profession and legal teaching were thus not able to play the role they ought, by Western standards, to have played."

There is now a deeper consciousness not only among the law teachers, judges and the enlightened professional lawyers, but also among others, that law has to play a crucial and vital role in a democratic society, that law has to serve as a vehicle of economic and social change in a developing society and that democracy and respect for law and rule of law will be strengthened in India by promoting legal education and research in law. It is the desire of the people that lawyers should play an active role in rebuilding the Indian society.

The Japanese legal education system is driven more by examination than by formal schooling. The profession of barristers, known as *bengoshi*, is highly regulated, and the passing rate for the bar examination is around three percent Prospective attorneys who do pass the examination must take it three or four times before passing it, and a number of specialized "cram schools" exist for prospective lawyers. After passing the bar exam, prospective barristers undergo a one-year training period at the Legal Research and Training Institute of the Supreme Court of Japan. During this period, the most capable trainees are "selected out" to become

career judges; others may become prosecutors or private practitioners.

## VI. Legal Education -- In Retrospect

As per the assessment of the University Education Commission's (1948) the conditions in law colleges in India were generally at a 'low ebb'. The law colleges did not hold "a place of high esteem either at home or abroad" nor had "law become an area of profound scholarship and enlightened research". The Commission, however, pointed out that such a pitiable situation had arisen mainly "from conditions inherent in our position as a dependent nation". During this period, the opportunity for original, stimulating study of law hardly existed. "Certainly, no demand was created for it while the burden of Government, public service and legal transactions were carried by others". The Commission emphasized the great importance of legal education in Independent India.

The several deficiencies diagnosed by the Commission in the legal education being imparted at the time were: i) there was no uniformity in law courses offered by the various Universities; ii) law courses started either after the Intermediate examination in some Universities; iii) or after graduation in other Universities; iv) few law teachers were full-time; v) most of them were part-time; iv) law was pursued by students not as the sole subject of study but usually as a subsidiary course along with the pursuit of Master's course in some other subject. The Commission, therefore, emphasized that there was "now need to re-organize our law colleges and give emphasis to this subject second to none. India's prominence and importance among independent nations and the realization of our national aims demand such a course of action."

The First Law Commission (1958) in its XIV Report on Administration of Justice stated that "the main purpose of

University Legal Education seems hitherto to have been not the teaching of law as a science, or, as a branch of learning, but merely imparting to students, knowledge of certain principles and provisions of law to enable them to enter the legal profession". For this purpose, part-time institutions were thought to be sufficient. The study of law had not been organized as a branch of learning and as a science. "Law has not been looked upon by the Universities as an educational or cultural subject". That was to a very large extent responsible for the absence of juristic thought and publication in India. Nor did legal education fit the law graduate for the profession. The Commission characterized the prevailing system of legal education as "Chaotic" and "dismal."

## VII. Role of Universities

'*Universitas majostrorum et scholarum*' signifies a body of masters and scholars. Universities are the true homes of culture (Newman) where knowledge is indispensable condition of the expansion of mind and is the instrument of attaining it. Law being the first act of human wisdom the aim of legal education is to build able professionals and also to prepare responsible citizens.

### A. Universities' Committees on Legal Education

Several Universities in a bid to improve legal education being imparted by them at the time took initiative to appoint their own committees for suggesting improvements therein. A very significant step taken in the direction of improving legal education was the appointment by the Banaras Hindu University in 1962 of a legal education committee, at the instance of Dean Anandjee, under the Chairmanship of the then Chief Justice of India, Hon'ble Justice B.P. Sinha.

Most, if not all, of the Indian Law Schools are not only under-staffed but also inadequately staffed. There are several reasons for

this, first: low priority is accorded to legal education by the Universities. Second: there is imperfect understanding of the role of law schools. Third: the academic responsibilities of law teachers are not fully appreciated. Fourth: law schools and law faculties are both single department institutions. Fifth: it is generally believed that a practising lawyer can deliver goods better than an academic lawyer. One of the maladies affecting the Indian educational system is the insignificant role played by the majority of staff members in the growth and development of the institution.

**1. Three-Year-Six-Term LL.B. Degree Course**

With the growing complexities of society, laws are not only multiplying but have also become complex. It was well-nigh impossible to do full justice to the law courses in two years of full-time instruction, far less to train law graduates for various careers that were open to them. This fact was recognized as early as in 1948 by the Radhakrishnan Commission and, ever since then, there was complete unanimity of the view that a 3-year period is the minimum required.

**2. Response to the Banaras Scheme of Legal Education**

The Banaras Scheme of 3-year law Degree Course which the Sinha Committee described as “a pioneer effort raising the standards of legal education” and as one “in the right direction for the improvement of the standards of legal education”.

These developments have had a tremendous impact on the negotiation which Dean Anandjee was having with the Ford Foundation for further financial assistance to improve legal education at the Banaras Hindu University. They have granted a sum of $2,40,000 to the Banaras Law School for inviting visiting professors, sending its teachers abroad for training and for the purchase of foreign Law books.

It is encouraging to note that the Mahajan Committee (Punjab University), Gajendragadkar Committee (Delhi University) and Sinha Committee (Kerala University) have made suggestions analogous to the Banaras scheme for the improvement of legal education.

The next significant step in the direction of improving legal education was taken by the University of Delhi. In 1963, the University appointed a Committee under the Chairmanship of Chief Justice P. B. Gajendragadkar to make recommendations for a thorough-going re-organization of legal education in the University. This Committee in its report in 1964 insisted that the "aim of the legal education which Universities impart to students is not merely to make our citizens more cultured and liberally educated in the broad features of law, but also to produce citizens who will follow the profession of law". But the Committee advocated a very broad view of the "legal profession". The legal profession in this broad sense is a comprehensive concept and it includes not merely practice in courts, but also covers law teaching, law research, administration in different branches where law plays a role; and in fact, commercial and industrial employments and all other activities which postulate and require the use of legal knowledge and skill which adopt legal process also fall within its scope". The Committee then went on to observe:

> "The legal education… is intended to be given to students who expect to follow one or another branch of legal profession, and its aim would be to make the students of law good lawyers who have absorbed and mastered the theory of law, its philosophy, its function and its role in a democratic society".

Other recommendations inter alia made by the Committee were: The library of the Law Faculty should be equipped with all

the necessary legal literature; some practical training is necessary for a law graduate wishing to enter the profession of law; a Council of Legal Education should be established; three or four model National Law Schools should be established which can attract dedicated and eminent law teachers and where experiments may constantly be made in newer methods of legal education.

"We feel confident that if senior, well-qualified and experienced teachers are attracted to such National Law Schools and are offered appropriate remuneration and are vouchsafed other essential facilities, it would be possible to revolutionize legal education on healthy lines without delay. Like law itself, the teaching of law would make progress by experimentation and the method of trial and error which can be adopted in National Law Schools with small body of well-chosen students without external hindrance or impediment will ultimately serve the purpose of bringing about a new pattern of legal education in this country."

**VIII. Role of University Grants Commission**

To the extent the responsibility for legal education lies with the Universities, the U.G.C. can play a pivotal role in its improvement through adequate funding, creation of senior posts and other means. The Commission has in course of time evinced interest in improving legal education and has taken various steps towards that end. The Commission helped the University of Rajasthan to organize a seminar on legal education at Kasauli in 1964. The Commission then set up the Legal Education Committee in 1970. This Committee decided to hold a seminar on "Legal Education in India: Problems and Perspectives" which was held at the Poona University from February 20 to 24. Then the U.G.C. organized during 1975 and 1977 four regional workshops on legal education at Madras, Chandigarh, Poona and Patna. The U.G.C. has also helped the Law Faculties in various other ways: creation

of posts of professors and readers, grants for libraries, providing fellowships for research etc.

The University Grants Commission, which is in control of higher education generally, has conveniently avoided paying attention to legal education except perhaps for their one-time effort in curriculum development way back in the 1980s. Thus, legal education is left with multiple controllers with little or no accountability. Even the accreditation mechanism put in place by the UGC is not particularly geared to evaluating performance of law teaching institutions. What is available to the public is an India Today Special annual survey Issues of the top ten law schools in the country laments Prof. N. R. Madhava Menon (for details see Section 16 infra). This is an unsatisfactory state of affairs for the future of legal education in India which will soon be called upon to compete globally for quality, professionalism and responsiveness to changing demands. But presently the things have remarkably changed. The University Grants Commission is presently very generous in giving liberal development grants to the Institutions of Excellence in Law during the present plan periods. This augurs well for a congenial attitudinal change for the healthy developments in Legal Education.

**IX. Bar council of India and the Advocates Act 1961**

A momentous development in the area of Indian Legal Education took place when the Bar Council of India was set up under the Advocates Act, 1961. Under the Act, the Bar Council enjoys very significant functions in relation to legal education. Under S.7 (h) of the Advocates Act, one of the important functions of the Bar Council of India is “to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils.” Under S.7 (i), the Bar Council of India is also empowered “to recognize Universities whose degree in law shall be qualification

for enrolment as an advocate and for that purpose to visit and inspect Universities." S.49 (d) empowers Bar Council to make rules prescribing, among other things, "the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose." The Advocates Act has thus conferred regulatory powers on the Bar Council of India vis-à-vis the legal education. S.24 (1) of the Act provides that a citizen of India will be entitled to be admitted as an Advocate if he has obtained a degree in law from a University in India, which is recognized for the purposes of this Act by the Bar Council. The Act has thus conferred on the Bar Council power to prescribe standards of legal education and recognition of law degrees for enrolment of persons as Advocates. The power to recognize or not the LL.B. Degree of a University for purposes of enrolment as Advocates gives a powerful leverage to the Bar Council to influence the content and standards of legal education. Thus, the Bar Council can lay down the content, syllabi, duration of the law degree as a pre-condition of its recognition by it.

Thus, it will be seen that while prescribing the standards of law degree is the function of the Bar Council of India, prescribing the standard of practical training was the function of the State Bar Councils. But the power of the State Bar Councils to do so was not completely free from control of the Bar Council of India, for, it could grant exemption from training to certain categories of law graduates and the rules made by the State Bar Councils needed its approval to be effective. Above all, the Central Government has an overriding power to make rules. But all provisions regarding practical training were omitted from the Act in 1973. Thus, a law graduate from a university can now directly enrol himself as an Advocate.

Finally, it is also thought that compelling a student to opt for a law career early in his life will make him a more motivated and committed law student and that this will gradually reduce the

number of students offering the LL.B. Course substantially. The Bar Council has also insisted that the five year course be run only in full-time institutions and that it will not be imparted as a part-time course.

There is, however, criticism of the five year course after the Intermediate Examination. It is argued that no purpose is served by clubbing together small bits of law, History, Sociology, Economics, politics and philosophy in the first two years of the law course and that only a full-fledged graduate is intellectually equipped to receive legal education. It is also doubtful whether law schools have the necessary infrastructure and wherewithal to run a five year integrated course. Both the feasibility and efficacy of the new course need not be doubted. In the context of contemporary India, it appears that five year integrated scheme of legal education leading to B.A., LL.B. (Hons.) Degree has been very successful particularly in all the National Law Universities and other prominent Law Schools and students graduating from these Institutions are very promising, enterprising, challenging in professional competency, Law Practice, Lawyering skills, Corporate Sectors, Law Firms and as Judicial Clerks as well.

The Bar Council has also made it clear that the course as mentioned above concerns only the professional legal education course for which alone the Bar Council of India has the statutory responsibility. The Universities are free to impart liberal legal education for the benefit of persons in different occupations and in public life so as to advance their occupational goals on the one hand, and assist the rule of law and constitutional governance on the other. But this course will not entitle them to seek a professional career in law.

One aspect of the present-day legal education may be mentioned here. The Law Commission of India in its XIV Report, the Kasauli Seminar on Legal Education, the Delhi Committee on

Legal Education, all had emphasized the significance of practical training to the law graduates aspiring to enter the legal profession and had suggested that the task of imparting practical training and holding the examination for admission to the Bar should be the responsibility of the Bar Council. The Advocates Act had originally laid the responsibility for this component on the State Bar Councils. But to organize this in itself being a very complicated and onerous task requiring huge infrastructure, the State Bar Councils found it extremely difficult to manage. Accordingly, the Bar Councils did not assume such a responsibility and now the Act has been amended and need for separate practical training removed. The Law Course run by the Universities themselves includes instruction in both substantive as well as procedural subjects and, also includes a component of practical training. Therefore, a person after undergoing a LL.B. Course as approved by the Bar Council, and passing the LL.B. Examination from a University, can straightaway enter the legal profession without having to undergo any practical training or passing any Bar Examination.

It is thus clear from the above that since the year 1947, much thought and action have gone into tackling developmental problems of legal education and several significant steps have been adopted towards the goal of its over-all improvement. In spite of what has been done in the field of legal education in the post-Independence period, many of the ills which earlier afflicted legal education still persist. The task of developing and improving the quality of Indian legal education in India is a difficult and arduous one and will need greater effort, sincerity, dedication and determination on the part of all the concerned persons and authorities. Now that the National Law Universities have taken up this challenge and are successful in providing both practical training and clinical legal education enabling graduates to enter into the profession immediately.

**X. Legal Education -- Multiple Controls**

Under the existing scheme, control over legal education is diversified: Theoretical and scientific education falls under the purview of the University Law Faculties and the U.G.C., and the practical or technical legal education is in the charge of the State Bar Councils and the Bar Council of India. There are thus multiple controls over legal education at present. In addition, in some states, particularly in Andhra Pradesh, the AP State Council of Higher Education, Hyderabad also controls the admission and affiliation process. One significant feature of legal education at the present-day needs to be emphasized, an important objective of legal education, no doubt, is to produce Advocates to practice before law courts and thus help in the administration of justice to the common man. It is on the basis of this premise that the Bar Council has been given a say in the maintenance of standards of legal education.

In the modern context, practice before the courts has become a very limited aspect of the legal profession. With the demise of laisez faire philosophy and advent of the welfare concept, globalization in the post-modern context the range of functions of the state has expanded a great deal. From this point of view, it may be advisable, as suggested by Prof. M. P. Jain, to take away the responsibility of regulating legal education from the Bar Council, which is a purely professional body, oriented to legal practice in the courts, and vest this function in an All India Council of Legal Education which may be created solely for the purpose of regulating and promoting standards in legal education and research. The council can deal with legal education in a comprehensive manner – both with professional as well as academic and non- professional aspects.

In a bid to bring about uniformity in the country's higher education policy in all sectors-medical, agriculture, management,

engineering etc. the HRD ministry has proposed the setting up of a Commission for Higher Education. Regulatory bodies of higher education in all fields would work under the supervision of the new commission. As per the proposal, even the University Grants Commission would merge with the new entity. The proposed apex body would oversee the functioning of higher education bodies like Medical Council of India, Indian Council of Agricultural Research, Dental Council of India, All India Council for Technical Education and similar such regulatory bodies. The new body would determine and ensure maintenance of standards of teaching, examination and research in areas where none of the regulatory bodies are mandated. So far, no such body could be established.

The National Knowledge Commission in its report observed that "in the light of the last 50 years and the existing gaps and deficiencies in overall quality, it is clear that the Bar Council of India has neither the power under the Advocates Act, 1961 nor the expertise to meet the new challenges both domestically and internationally.

**XI. Law Schools and Legal Education -- Aiming at Excellence**

In most of the Law Colleges, law libraries are in poor shape and a lot of effort and more money are needed to build up some good law libraries where legal research can be conducted by law scholars. A few schools of excellence at the top have excellent facilities and admit only the select best, intellectually dedicated students on an all-India Entrance Test basis; presently known as Common Law Admission Test from 2008 onwards and at another level, the other law schools are catering to the majority aspirants of legal education. In the top law schools, to be known as National Law Universities, the emphasis is on quality and quality alone.

It is, therefore, necessary to establish few more centres of excellence in the country where something more can be given to the

better quality law students than can otherwise be given to the remaining students in the LL.B. Course. Also, in these centres, law should be studied not merely as lawyer's law, but as a social science, law in relation to society and an inter-disciplinary approach to law may be developed. The students should be inducted and must be involved into the courses like ADR Law, Science and Technology including Info, Bio and Nanotechnologies.

The concept of a National Law School has been picked up by the Bar Council of India in the context of its statutory responsibility for maintaining standards in the professional legal education under the Advocates Act, 1961. The National Law School of India University, Bangalore constitutes a very good example of co-operation among all the three wings of the legal profession – Bar, Bench and law academics. The Chief Justice of India is the Visitor of the Law School; the Chairman of the Bar Council of India is the Chairman of the Governing Council of the School. "The objects of the School, however, are not limited to preparing conscientious, competent members of the profession, though it remains its basic mandate. The School is expected to advance and disseminate knowledge of law and legal processes in the context of national development. In other words, the School shall endeavour to look at law as an instrument for social change and human well-being. This major focus of the School's curriculum necessitates the study of law from broader socio- cultural perspective and developmental goals…". All 20 National Law Universities in India follow presently more or less the same guidelines.

Most of the Indian Law graduates preferred the highly lucrative corporate litigation route though one of the key objectives in setting up the school was to send them to Indian courts and help raise the quality of the bar. Some felt that "in a global economy, access to top MNCs and low government salaries ensure that top law brains are absorbed by market forces. Many National Law School, Bangalore alumni do leave law firms mid-career to move

into full time litigation. But none generally opts for teaching in Indian Universities.

In the India Today-Nielsen-Org-Marg Survey of Law Colleges, National rankings are derived from a combination of perceptual and factual scores. Institutions which did not provide factual information were not ranked. The ranking is based on the following themes:-

Reputation; Curriculum; Quality of academic input; Student care; Admission procedure; Infrastructure; job prospects; Perceptual rank; factual rank.

The criteria adopted seem to be geographical distribution and student care etc. Some vague terms like reputation, quality of academic inputs etc. defy objectivity and quantification. Hence, a better system of ranking should be evolved and more so by self-assessment and self-introspection.

Teaching of Law in the light of social sciences was meant to view law in the light of other social sciences, which would help in contextualizing the subject. The idea of generating socially-sensitized lawyer in a money-driven profession was novel in the Indian Legal Education.

Law Schools unlike other streams of education are fast catching up with the demand by offering relevant courses that have prompted companies to keep competent legal eagles on their rolls. At the same time the schools also face common constraints. Growth is hampered for want of funds.

The other constraint is attracting competent faculty which can be overcome only by offering better salaries so that the talented are drawn to teaching too.

We have to move beyond pre-existing critiques of legal education as ideological training. Employing emerging interpretations of the Foucauldian concepts of the juridical and the disciplinary, it provides an analysis of the extent to which the expression 'law as an academic discipline' refers to more than a distinct body of substantive principles. In particular, it illustrates the extent to which legal education is a discursive practice constituted simultaneously by a substantive construct of juridical power and a catalogue of disciplinary legal methods.

## XII. Legal Education and Research- Post-Modernist perspectives

Recent studies in law have been directed towards the development of methodologies and institutional mechanisms for planning and decision-making, recurring and continuing education; broadening access to and equality of opportunity through clinical legal education and legal aid to the poor; the use of new technologies; costs and financing of different programmes like legal literacy drives and pre-litigation conciliations and Lok Adalats; curriculum planning; institutional research; the governance and accountability of institutions of legal education. The University education now stresses the importance of studying law roles, the usage of law trained people, the work and socio-economic character and ideologies of lawyers.

Most of the Commonwealth countries give low priority to legal education and consequently law schools are not equipped with full-time faculty. It is often said that many poor countries are spending proportionately more on education than the richer countries, but getting less in the way of benefits from the heavy sacrifices imposed. There are increasing pressures on the legal academics to clarify the purposes for which particular programmes of education are provided, to match claims with performance, to identify kinds of reforms needed; to revise standards of

accountability and procedures for budgeting programs in order to evaluate their benefits against their costs; to reform employment policies within the educational system.

We ought to emphasize a 'systems approach', the importance of perceiving legal education as a multidimensional activity, one which uses formal and non-formal methods, self-education, clinical education and of course, learning through various practical experiences. While it may be amorphous, the educational planning in law at the Law University and Law faculties of Universities level is generally directed at concerns such as the following:

**i) Socialization objective**

The use of law education is to develop perceptions and understanding of the environment, local and global, to understand the problems of one's society and to influence values and attitudes. The basic degree programme should include a curriculum which helps students become better educated citizens as well as lawyers and provide opportunities for many kinds of educational experience e.g.: participation in legal aid and community service programmes, negotiation, mediation, conciliation, arbitration, internships, moot courts, research, publication of scholarly journals, forums, task forces, workshops and other enterprises devoted to current issues of significance. Legal socialization is a very important dimension of educational development in Law Universities, where we stress the importance of law as a dimension of general civic education emphasizing the knowledge about the various legal cultures around us, about the legal problems and concerns of the people, about the way in which people learn about and regard courts, the profession, the police and other critical organs of the legal system, about values associated with law and justice, and how these are formed. Through media, extension programmes and other activities we can provide civic education.

**ii) Man-power objectives**

Attention is given to analysis of both economic and social activities of university law graduates in society, their mobility, the ways in which they engage in public service, entrepreneurial transactions, representation of different groups, brokering political or economic projects, and deference to human rights. Man-power approach should address the needs for sub-professional training. The university is perceived as a resource within the total educational system and the law school as a multi- functional institution depending upon the local variables in these sectors of human research and development.

**iii) Man-power objectives and the problems of scale**

The methods used emphasize active student participation in problem solving and the development of communication skills. The universities are paying more attention to the needs of the legal systems at the basic levels of operation and to function as a vital research center. We should try to evolve more professionally oriented courses.

**iv) Opportunity Objectives**

Efforts should increasingly be made to open new streams of entrants admitting persons from groups which, historically, have been, disadvantaged, either by caste, religion or sex to achieve the goals of Affirmative action programmes.

**v) Common law – Civil law dichotomy:**

Common Law system is mostly adversarial and hence the role of the advocate is limited to the exercise of the forensic skills in collecting and articulating the evidence, whereas the Civil Law system is mainly inquisitorial and hence the roles of lawyers and

judges are wider and require a more meaningful interaction with all societal forces. The role of lawyer in the contemporary times should not merely confine to litigation as such but it must equally focus on the role of a lawyer as a mediator, a counsellor and a conciliator. In making the legal education more meaningful in the present day context the law faculties must aim in inculcating these roles and functions, to the persons entering into the profession. With the development of the behavioural sciences the emphasis in legal education is on the study of impact of law on society and of society on law.

Liberalisation of economic policy in India and India's entry into the world market in a big scale enhance the responsibilities of the law faculties in developing comparative law studies mostly in the field of Comparative Business Law, International Commercial Arbitration etc. to safeguard the national interests. This branch of comparative law and conflict of laws need to be developed, as they are not yet popular subjects.

**vi) Artificial Intelligence**

The prospects are bright both for teaching and research in the application of computers. Interdisciplinary studies in the area of law and computers would provide a meaningful interaction between the legal academics and technologists. Computers can be best used in two ways to assist the legal profession. One is the information retrieval system which can be developed with the help of law faculty and the computer science department. The second area in which computers can very usefully be employed is artificial intelligence system with which several types of stereotype cases can be decided with the help of computer programmes to arrive at more objective and quicker decisions. The law faculty should actively engage in collaborative research with the computer science department. This needs to be pursued vigorously to design

meaningful computerized programs as alternative dispute settlement mechanism.

**vii) Research Objectives**

The tasks range from insightful analyses of the content of contemporary legal doctrine to studies of the actual impact of particular laws on particular activities in society, from normative prescriptions providing moral principles underlying the legal order to scientific descriptions of the social context of laws and legal institutions, from research designed to aid policy judgments to research directed at general theories about social change. The emphasis should specially be on the use of social perspectives and methods. The ongoing research activities include Law, Science and Technology including the law's role in electronics communications and computer revolution. Law and Economics, Law and Political Science, Law and Anthropology, Law and Biotechnology, Law and Communication Technology, Law and Techno-Science are the emerging new and challenging areas. The latest research from skin cells to stem cells, a new technique developed by Shinya Yamanaka of Kyoto University has set at rest the moral and legal dilemmas in embryonic stem cell technology because it creates embryonic like stem cells without creating, harming or destroying human lives at any stage.

**viii) Administrative objectives: Developing Vehicles for Planning and Authoritative Decisions**

The most important object is not a plan, but the continuing generation of flow of information and ideas and decisions. Especially needed is the generation of new human resources - a new breed of law teachers and jurists who can bring new perspectives and new leadership to the profession of legal education. They are both the catalysts and the deliverers of reform.

This kind of leadership though late is fortunately, emerging in our Legal Academia.

The new scholarship, in our Law Schools seeks to investigate the social contexts of law, the variables which may affect the working of institutions and the behaviour of persons in law roles or the impact of particular laws on society or similar issues. This kind of development-oriented socio-legal research calls for new perceptions about law, new methods to formulate questions for investigation and to acquire and evaluate data, and interdisciplinary collaboration - a new approach to research, which looks at social problems from many perspectives, not simply a legal one. Towards this end the syllabus at postgraduate level has to be restructured and the topics for Ph.D. theses should also emphasise empirical research on socially relevant themes also with live sciences and physical sciences interface. These include:

1. Legal Control of Drugs and psychotropic substances
2. Law and Artificial Intelligence
3. Law and information technology
4. Law and Gender Justice
5. Law and economic liberalization
6. Alternative Dispute Resolution
7. Air, Space and Law
8. Disaster Management and Law
9. Law and Biotechnology
10. Justice Education
11. Alternative Adjudicative Mechanism

**XIII. Critical Legal Studies – Post-modernist Challenge**

There is an intimate relationship between the processes of education, the transmission of knowledge, the deployment of training and the exercise of power. In so doing, it will uncover the complex juxtaposition between legal ideology and legal method that

underlies the operation and teaching of law as an academic discipline. Juridical systems are permanent vehicles for relations of domination and polymorphous techniques of subjection' (Foucault, 1976b: 24-25).

Critical Legal Studies thinker Duncan Kennedy has criticized what he considers to be the '*passivising*' experience of legal education, and its accompanying tendency both to perpetuate hierarchy and to sustain a belief in its natural necessity. According to Kennedy, submissiveness is imbued within the structure of legal education. This submissiveness, together with the deployment of juridical ideology through the narratives of the 'knowledgeable' authority, render the experience of studying law for many students' one of double surrender – to a *passivising* classroom environment and to a passive attitude towards the content of the legal system' (Kennedy, 1990: 40).

We seek to draw attention to the formative role played by legal education in the development not so much of what lawyers think, but rather of how lawyers think.

Law as an academic discipline is more than a body of substantive principles. It is set in a particular institutional context, and as such legal education necessarily entails not only the transmission of ideology but also the teaching of specific skills that reflect the particularity of the 'legal method'. It can be argued that these skills simultaneously reflect and produce a normalised lawyer's way of thinking that in turn re-affirms the complicity promoted within the *passivising* classroom environment and perpetuates the prevailing legal ideology itself undermined within critical commentary.

A particularly notorious debate between Peter Gabel and Duncan Kennedy, titled 'Roll over Beethoven', which was published in 1984, provided a vivid illustration of the rival positions which

emerged within Critical Legal Studies and which remain largely unresolved, perhaps by definition unresolvable (Hunt, 1990, p 521). Gabel and Kennedy assumed these very different, indeed polar, positions within CLS scholarship: whilst Gable advocated some form of reconstructive enterprise, Kennedy maintained a more radical and uncompromising position determined to concentrate on 'trashing' liberal legalism. Thus, as the debate revealed, for Gable and critical project was directed towards making law better approximate 'experienced reality'. The 'human condition' is one of 'fundamental contradiction', and law must acknowledge this whilst reflecting the need for individuals to 'overcome alienation' from society. The sense of community which must be inculcated into previously alienated individuals will be realised by a crucial moment of connectedness, a 'moment of describing existential reality at the level of reflection', which Gabel termed 'intersubjective zap'. At the same time as reinvesting a philosophy of self, Gable, like others such as Roberto Unger, wanted to effect a complementary revision of legal theory and practice.

In his later writings, Kennedy has advocated a rather quieter strategy, preferring to 'undermine and entice', rather than engage in anything more confrontational (Kennedy, 1997, p 340). It is certainly true that much of the zeal that so fired the 'crits' during the 1980s appears to have passed. As Peter Goodrich suggests, the critical strategy now appears to be one of nurturing intellectual 'sleepers' in law schools, subversive radicals, who 'await the twenty-first century night when under cover of darkness they will crawl out of the belly of the beast' (Goodrich, 2001, pp 974-75, 982). There is an ironic edge to the observation. But it remains an intriguing thought, and it might just prove to be the more effective strategy after all. For it is certainly true that law schools retain their enormous, and disproportionate, influence in modern society.

**XIV. Clinical Legal Education**

There is a growing recognition in recent years that knowledge of the law is best understood in the context within which it operates in our complex society. This new approach to the study of law brought forth the concept of 'Clinical Legal Education' into limelight as a means of making legal education system more socially relevant and professionally significant. Clinical Legal Education has now become an integral part of the curriculum in undergraduate programmes of law and is placed high on the educational agenda of many reputed law schools and Universities throughout the world. In the U.S.A., which is regarded as the home of clinical legal education, 90 percent of law schools use some form of clinical approach, and the law school clinic is firmly entrenched as an important vehicle through which instruction is given in the theory and practice of law. Similar developments have taken place and are now taking place in Australia, Canada, India, Malaysia, South Africa and the South Pacific. In Canada, and more recently in Australia, the value of clinical methods has been recognized and praised in governmental reviews leading to the expansion of such programmes in law schools.

Changes in the law syllabi have been made at the behest of the Bar Council of India and the University Grants Commission so as to incorporate 'practical training' component into the law school curriculum, which for the most part grew out of the clinical education movement. Moreover, the recent reforms in legal services delivery in India, such as community based informal alternative dispute resolution forums, known as 'legal aid camps' or 'Lok Adalat' warrants substantial support from law school clinics for their effective functioning. Despite its growing importance, clinical system is not getting much support and encouragement from law schools, Universities, law faculties and the legal profession. This indifferent attitude is mainly attributable to the lack of proper understanding and misconceptions about the role and content of

clinical legal education among the legal educators, law students, law faculty, members of the bench and bar. Dissemination of proper knowledge and sensitization of students and the faculty on the above aspects is, therefore, an imperative necessity to secure active student participation, faculty involvement and the support from Bar and Bench in clinical activities.

The term Clinical Legal Education, therefore, refers to learning by doing the types of things that lawyers do. It enables students to take on real clients' problems and work with them with the obvious goal of equipping the students to perform the variety of roles which lawyers are expected to play in our society. It is a system designed to facilitate the students to 'learn the law through experience' and directs the students to make an attempt to understand the theoretical and operational parameters of legal doctrines and statutory principles and the techniques of applying them in actual practice and real life situations. The students gain these practical insights through participation and undertaking certain clinical projects designed and organized by Law School Clinics.

Clinical legal Education and Practical Training are often confused with each other. The use of training techniques with nothing other than skill development in mind would be seen as practical training, but not clinical in its true sense. On the other hand, clinical techniques make the students capable of learning far more than skills, and can develop critical and contextual understanding of law as it affects people in society. Clinical experience in law school thus offers a unique opportunity for students to learn under supervision, not only about the professional skills used by lawyers, but also the role of the law and legal profession in society.

Clinical legal education integrates both 'doctrinal' and 'empirical' approaches in the study of law with a view to secure

more effective student participation in learning the law. Hence, it is quite different from traditional legal education. The lecture-seminar methods so common in the education of law rarely involve students in the real or realistic experience of the law in practice. The study of law through the traditional approach of analyzing legal doctrines and precedents and the conventional lecture and discussion methods are based upon 'teacher-centred' learning approach and have proved themselves inadequate in making the students participate actively in learning process. The 'case study' method pioneered by Christopher Langdell and others at Harvard Law School in the last quarter of the 20th century is also of limited value. Under the Langdellian method students concentrate on appellate decisions, analyzing them and identifying principles upon which they were made. The result of lecture-seminar and case study methods is fundamentally limiting as students are largely passive recipients of knowledge, relying on an account of the law by an 'expert' in that field supplemented by periodic involvement through the production of assignments and tutorial discussion.

In India there is no proper forum or an umbrella organization such as Clinical Legal Education Organization (CLEO) in U.K., Clinical Legal Education Association (CLEA) in U.S.A., Association of American Law Schools (AALS), the Australian Clinical Education Association. All these organizations are providing a forum for the law teachers who are interested in a clinical approach to discuss the work together and share the experiences amongst them. They are further monitoring and playing a supportive role to the clinical legal education programmes in their respective countries. Such kind of initiative is very much needed in India too.

The above problems are therefore need to be addressed in a proper manner in an appropriate forum by all concerned, be it the BCI, U.G.C., Central and State Governments for evolving an effective clinical methodology and integrate it with the law

curriculum so as to achieve a fair balance between the doctrinal and empirical goals of legal education. This need has been emphasized by Professor Madhava Menon, the pioneer of clinical legal education movement in India, in the following words "clinical education can in the future open up the social action role of legally trained persons".

**XV. Legal Education and Techno-Science Challenges**

The advances in recombinant DNA engineering Micro-chip Technology have been spectacularly wide ranging and relate to almost every area of human life. Advances in cyber-technology give rise to a whole variety of technologies and underlie the 'promise' and 'perils' now of new forms of emergent nanotechnologies pose a serious challenge to the Legal Education.

The emergence of Information Technology and Biotechnology is decisive transformation that marks globalization. The contemporary world stands transformed in several ways by the revolution in microchips and integrated circuitry. It enables patterns of time-space compression, a defining feature of contemporary globalization. It makes real the hitherto unimaginable advances in genetic sciences and strategic biotechnologies. Advances in recombinant DNA technologies and integrated circuitry depend wholly on revolutionary techniques of artificial intelligence.

This development provides a driving force for the global emergence of trade related market friendly human rights and human capabilities. This leads to movements towards redefinitions of impoverishment. Poverty is no longer identified in terms of material deprivation but in terms of access to information or to Cyberspace enhanced human capabilities. The new North is Cyber-rich and the new South is Cyber poor, thus marking what is known as digital divide.

The emergence of Information Technologies has facilitated widespread privatization of Governmental functions in welfare administration, health, education, finance, business, industries etc. Digitalization of the world provides time space for increased and voluminous solidarity among the legal fraternity.

These also give birth to the formation of techno-science based strategic industries that resent and often reject state and international regulation and generate new forms of techno-politics. Together, these constitute a genomic materiality of globalization (little noticed in social theory narratives of globalization) contributing to the formation of 'New World Order'. Biotechnologies, united in the pursuit of reductionist life sciences- where 'life' is no more than information open to techno- science codification, manipulation and diverse techniques of mutation and reproduction—fall into several domains of law and technology. Agricultural biotechnology, fostered by agribusiness, promises food for all; pharmaceutical biotechnology promises health for all; industrial biotechnology promises sustainable development for the world and the human genome projects, among other things, now promise new possibilities in therapeutics, health care and benign human cloning. The "Development in Science and Technology has thrown open the possibility of human kind of being capable to genetically modified itself. Such development in science and technology highlights the ethical, legal and normative limits and impact and consequences of scientific knowledge upon society. Thus, while advances in science and technology, especially in the biological field offer new hope for the development and wellbeing of societies and individuals, such as in agriculture (possibilities of producing genetically modified food), they raise at the same time challenging and serious ethical questions. What we are trying to suggest is that managing globalization and massive explosion in scientific and technological knowledge and innovations is impossible without an ethical underpinning based on values

shared globally". The belief that biotechnology provides unprecedented vistas of human progress is not just media hype; its practitioners, in all parts of the world, live by it. The Law Schools must invariably keep in mind the above- mentioned advances in techno-science while formulating curriculum and promoting pedagogic skills and ideology. These developing technologies must be addressed by the Law Educators.

**XVI. Digital Revolution**

The digital revolution offers significant opportunities to those who provide legal assistance and education to low-income people and communities. New technologies enable us to create higher quality work product, conduct better research, work more collaboratively, learn more readily, and – most important – serve clients more effectively. Clients and advocates alike can find relevant information on the Internet, programs can use a variety of new management and evaluation tools, and everyone can communicate more easily.

In the past 10 years, our society has experienced a "digital revolution", the implications of which are as stunning as those of the industrial revolution, yet are even more remarkable because these changes are happening in a fraction of the time. Beginning with the affordable personal computer and taking a giant leap forward with the creation of the internet and the web browser, this revolution has changed how we work, play, communicate, learn, and obtain gods and services.

Yet the pace of change has not been the same in all sectors of society. Technology use by the middle and upper class and by the West is significantly ahead of use by poorer people and people of colour, a gap that some observers have termed the digital divide. On a corporate level, this gap looms equally large between the private sector and the non-profit sector.

These technological advances have:

a) Enabled greatly expanded access to legal information for both advocates and clients through internet and e-mail technologies;
b) Expanded access for clients by using telephones for screening, obtaining basic client information, referrals, and providing brief advice and services, and also by posting information on the Internet;
c) Enabled better case management and data collection, along with automated templates for document creation;
d) Improved communication between lawyers and clients through new telephone technologies, cell phones, and video conferencing;
e) Facilitated staff and volunteer recruitment through e-mail and the Internet;
f) Provided new avenues for outreach to clients and the public;
g) Increased training opportunities for advocates; and
h) Created a greater sense of community through e-mail and the Internet.

The uses of new technologies by the equal justice community in three functional categories can be discussed as follows:

a) Improving program and office management;
b) Increasing access to assistance and information for advocates; and
c) Improving client education, preventing legal problems, and assisting pro se litigants.

In addition to educating clients and communities about resources, the Internet can also provide people with information

about their legal rights and about how to solve legal problems on their own when they are unable or unwilling to obtain an attorney. At the most basic level, pro se brochures and manuals can be posted on websites, which is an efficient distribution and production mechanism.

Moreover, the potential of web technology exceeds simply improving access to what otherwise might be available in print. Computer can help pro se litigants create attractive, properly formatted and persuasive court forms and pleadings. Computerized templates can use branching logic to take clients through the process of analyzing their case and providing the appropriate information to the court. Video screens can be used to show clients how to navigate through the courthouse, or even how to present their case. Audio files can present information in spoken form for clients who can't read (due to illiteracy or disability or whose language (such as Navajo). These programs can be made available at courthouse kiosks, libraries, and anywhere a client can obtain access to the Internet.

A multifaceted effort, including education, scholarship, resource development, and collaboration, can serve as a powerful catalyst for change, even when the total amount of resources available is relatively small. Legal reasoning involves case analysis in statutory as well as real world perspectives. The impact of real world perspective on case analysis poses a serious challenge to knowledge engineers for building legal expert systems. A legal expert system intends to provide intelligent support to legal professionals. Legal predictive system is an attempt to predict the most probable outcome of a case according to statutory as well as real world knowledge of the legal domain.

One of the basic principles of justice is that `Justice delayed is justice denied'. It is from this that the Supreme Court of India has carved out the fundamental right to speedier trial from article

21 of the Constitution of India. The present adjudication process requires transformation in view of the high cost of legal services, baffling. Complications are existing procedures and frustrating delays in securing justice. Formal adjudication should be more of a last resort than it has been in the past. In recent times, efforts have been made to develop alternate adjudication models in the form of Lok Adalats, Nyaya Panchayats etc. In this context, it is felt that alternate adjudication machinery can be augmented with modern computers for a greater extent of openness and accessibility thus lending credibility to the dependence of both government and people on these modes of alternate adjudication machinery.

Automation in the legal world was first proposed (Mehl 1958, pp. 755-79) at an International Symposium on "Mechanisation of Thought Processes" held at the National Physical Laboratory in Teddington, London. Law machines were classified by him into two types: documentary machines and consultation machines. Documentary machines are meant for legal information retrieval operations such as storing/ retrieving legal provisions and supporting as well as opposing precedents relevant to the given case. A program FLITE (Finding Legal Information Through Electronics), was developed in 1964 as the earliest full text retrieval system for the US Air Force. LEXIS and WESTLAW (Hafner 1987, pp. 35-42) are some of the recent commercial systems offering interactive retrieval through terminals at the customer's office. Intelligent support cannot be provided for the user while retrieving the precedents owing to the text matching (keyword search) technique followed in these systems. Hafner (1987, pp. 35-42) proposed an AI-based conceptual retrieval system using individual case frames so that search for relevancy can be made based on a concept of the case rather than text matching of certain keywords. Considerable research work has thus been carried out and significant developments have taken place in the area of documentary machines.

However, no such significant progress can be claimed to have been made in the area of consultation machines which are meant for giving legal advice. The HYPO system developed by Rissland and Ashley (Ashley & Rissland 1988; Ashley 1991) during the 1980s aims at helping an attorney to analyse a new case in the light of relevant precedents and accordingly generate outlines of arguments for both plaintiff and defendant. The JUDGE system, developed in the late 80s by Bain (Srivastava 1991) proposed modelling the sentencing ability of judges. This system identifies a binding precedent according to a set of salient features and suggests a commensurate sentence for being awarded in the case on hand. These two systems have been the most widely accepted legal consultation systems to date. But these and similar other consultation systems are oriented towards precedents and are based on a case-based reasoning paradigm.

A precedent can either suggest judgment appropriate to cases with similar current fact situation or it can point to an apt case-law to solve a particular technical ambiguity. These two aspects of the precedent are to be dealt with separately since the first aspect provides only the guidelines whereas the second provides the case- law that is binding on lower courts. The first aspect is emphasized in systems like HYPO whereas the second aspect is considered in systems like JURIX (Srivastava 1991) and Gardner's legal reasoning system (Gardner 1987). Gardner's approach suggests that the case be analysed keeping in view statute as well as relevant case- laws. This system aims at giving decisions for `easy' cases, while the `hard' cases, cases which can be argued in either way by a competent lawyer, are left undecided. McCarthy's TAXMAN project (McCarthy 1980) models deductive legal reasoning based on statute. The control strategy of legal systems determines the applicability of those systems to various fields of legal domain - HYPO suits trade secret misappropriation. TAXMAN models the taxation of corporate re-organisation.

Gardner's system deals with formation of contracts by offer and acceptance. However, for certain other legal fields, legal reasoning involves analysing the case through a real world perspective also. Along with the statutory rules, various heuristics imposed by culture, region, conventions and the experience of judges are also to be considered while making the decision. Given the case proceedings/current fact situation a highly structured legal reasoning system to analyse the case and thereby predict the most probable judgment based on the statute and discretion of the judge is proposed in this paper. It is hoped that the proposed legal counselling system will be of use to our society in the following ways.

(1) The system, by its ability to predict in advance the most probable outcome in a given case, will enable individual clients to decide about the advisability or otherwise of entering into a legal dispute in a given situation. This in turn will lead to reduced workload on the considerably over-burdened courts.

(2) The system, through its ability to estimate the effect of each individual fact on the judicial decision (by simulating the judgment with altered current fact situations) can aid legal practitioners and criminal investigators in discharging their professional duties more effectively and efficiently.

(3) The system, by providing an integrated view of the case through the highly structured representation of the current fact situation of the case, can be helpful to judges in taking faster decisions thereby mitigating the hardship caused to the litigant public by delayed justice, the bane of the present judicial system.

(4) The system can resolve petty litigations among people who cannot afford the money and the time required in the regular court proceedings, thus providing a computerised alternate adjudication system.

(5) A generalised system can be developed by drawing on the expertise of several meritorious judges, which in turn can be used to check the correctness of a specific judgment, so that the case may be reconsidered if necessary.

## XVII. Artificial Intelligence and Challenges to Legal Education and Research

Artificial Intelligence is increasingly used for facial recognition. Now it is grossly beyond AI emotion recognition to check the veracity of witness statement, Victim's emotions and the accused intentions which all may help in decision making and quantum of sentence or compensation or restoration.

The prospects are bright both for teaching and research in the application of computers. Interdisciplinary studies in the area of law and computers would provide a meaningful interaction between the legal academics and technologists. Computers can be best used in two ways, to assist the legal profession. One is the information retrieval system which can be developed with the help of law faculty and the computer science department. The second area in which computers can very usefully be employed is artificial intelligence system with which several types of stereotype cases can be decided with the help of computer programmes to arrive at more objective and quicker decisions. The law faculty should actively engage in collaborative research with the computer science department. This needs to be pursued vigorously to design meaningful computerized programs as alternative dispute settlement mechanism.

Access to justice requires a just process, which includes, among other things, timeliness and affordability. A just process also has "transparency", which means that the system allows the public to see not just the outside but through to the inside of the

justice system, its rules and standards, procedures and processes, and its other operational characteristics and patterns so as to evaluate all aspects of its operations, particularly its fairness, effectiveness, and efficiency.

Cornerstones for access to justice include lawyers, free dissemination of law and the judiciary. Now, lawyers are not practically accessible to all individuals in the society owing to structural failure of the legal system. Law develops its complexity with the society; nonetheless, dissemination technology of law is not as developed as sufficiently to satisfy demands of the society. The court is in a limbo in which impartiality and fairness to all parties constrain its role to assist unrepresented litigants.

Disruptive legal information technology and emerging Electronic Legal Information (ELI) may arise as the 4th cornerstone in face of the challenges, the other three being

(i) Lawyer
(ii) dissemination of law and
(iii) Judiciary.

Electronic Legal Information (ELI) refers to (i) an integrated Electronic Law governing civil procedures and other areas of substantive law, (ii) electronic legal document filings and evidence and (iii) electronic court case status information. ELI is transforming the existing cornerstones to their virtual existences, which take on new capability to face the challenges of high costs, delay and complexity.

To promote access to civil justice, disruptive legal information technology should be adopted and a positive right to access ELI be established. For unrepresented litigants, the use of ELI will put them in a better position to assess if legal assistance should be sought or it would be better to remain unrepresented.

Should they choose to be unrepresented, ELI provides ease of reference to law and integrates law from their perspective. For represented litigants, they will have a greater access to information concerning activity of court proceedings and they will be in a better position to push progress with the availability of case status information and electronic court document filings.

**XVIII. AVATAR Technology**

Pedagogical agents offer the advantage of an almost-human element that can be more consistent, more efficient and more economical than in-person human trainers through AVATAR Technology [Advanced Video Attribute Terminal Assembler and Recreator]. University must develop AVATAR Technology for their classroom and court room experiments.

AVATAR Technology enables a variety of different modalities for teaching and learning online. A simple AVATAR can serve as a one-on-one coach or tutor in an asynchronous, e-learning program. A more advanced pedagogical agent guides learners through courseware, explains and demonstrates techniques, allows multiple tries and offers hints and feedback. AVATAR-based course can be modified or updated to target training for different purposes. In addition, pedagogical agents offer the advantage of an almost-human element that can be more consistent, more efficient, and more economical than in-person human trainers. Teachers and educators of Law Schools need to understand that virtual worlds, like other social media, are here to stay and these exciting forms of media are not a threat to formal education. The genuine conversation and participation that virtual worlds encourage is a step toward more authentic learning for all students and supplement the classroom and Courtroom work including simulation exercises in Mediation, conciliation and Arbitration areas. AVATAR software and hardware need to be developed by

experts both from law and computer science departments through Artificial Intelligence and Multi-user Domain.

**XIX. MOOC Experiment**

In globalizing the legal education, the law educators can give a serious thought of organizing MOOCS (Massive Open Online Courses) that have made global classrooms a reality. For Indians, MOOCs make perfect sense "if you can't make it Ivies, why not bring Ivy-level learning to you." In the past 6 months, Coursera has seen a 139% increase in India. The three Top US based MOOCs – Coursera, Udacity and Edx now have a huge percentage of Indian students who are availing of the facility of listening to the star Professors from MIT, Harvard, Stanford, Duke University, Cambridge, Oxford etc. while staying put in Mumbai. MOOCS are usually free, credit-less and well massive. Classmates may lean on one another in study groups organized in their towns or over online forums. MOOC makers understand brevity. Feedback is electronic. There may be home-work and final examinations. These are some of the features. As we have large number of law students and young Advocates we should develop this massive open online courses for large scale benefits. MOOC may not replace classroom education but bolster the existing system in its new role in increasing institutional capacity in augmenting in- class teaching with online control with proposed 1500 new Universities to come up in India shortly. During pandemics this type of programs are of successful and are of great help. During the pandemic, MOOC experiment was successful and has contributed significantly. It has lessened the hardship to students.

The platforms developed by Ministry of Education in collaboration with various reputed Universities like *e*-Pathshala, Swayam are helpful in extending and imparting the education. Courses, both, Legal as well as Interdisciplinary, are contributing to expand the horizon of legal knowledge.

## XX. The Practice Theory of Law and Legal Education

The Practice theory of Law (PTL) offers a fresh look into the possibility of legal knowledge, by enabling the depiction of legal norms in a practice that combines the two levels of thought and action. This possibility opens up when we move beyond the two currently dominant legal theories concerning the possibility of legal knowledge, namely conventionalism and essentialism. This move requires that one leave behind the philosophical assumptions that underpin these two theories and advance a new account of knowledge, one that connects it with the idea of a practice of judging which is normatively constrained by reasons or, to say the same thing in different terms, reflexive. Pragmatic rationalism, the new account that has been put forward here, argues that nothing can be known unless it can function as a reason or a constraint within such a practice. Unless, for instance, a norm imposing penalties for tax evasion can function as a constraint for a judgment purporting to determine fines within a legal system, that norm cannot be known. As a result, reflexivity, or the ability of agents to think on reason, becomes a key concept for knowledge.

Judging is neither just acting nor merely thinking, for otherwise thoughts would anew become either indeterminate or unintelligible. Instead, it is an integrated instance of thinking and acting, or a practice, which asks for justifying reason with respect to any cognitive move performed within it.

In contradistinction to both interpretivism and the conventionalist account of law, the Practice Theory of Law (PTL) argues that law is a constraint-generating concept. PTL seeks to demonstrate this claim by illustrating the reflexive character of legal practice as consequential upon its responsiveness to reasons (legal reasons). As a result, the most important task of PTL is to develop a working conception of legal practice. In doing so it must defend the normative character of legal reasons against the pitfalls

of both the interpretivist and the conventionalist accounts of law with an eye to avoiding losing hold of the reflexivity of legal practice.

PTL encourages a shift from the formal to the substantive features of law. Owing to the opening-up to legal phenomena to the argumentative practice that underpins them, legal form may be explained as depending on the concrete substantive principles that are at work with respect to particular situations. In this context, form loses its 'uniqueness', for it becomes possible to identify more than one formal or institutional arrangement as suitable for serving the same underlying principle or cluster of principles. Flexibility of form resists formalistic analyses of legal phenomena, especially those that attempt to specify exhaustive sets of criteria for the validity of legal rules, usually by offering a complete list of legal sources within a legal system.

The law faculties in the Universities should play an important role in introducing new courses and implement them immediately. The traditional Universities must come forward to revitalize the practical training programme and to introduce clinical legal programme and effectively monitor the implementation of these measures by introducing credits for active participation in the programme. Bar Councils must come forward to play a significant role in streamlining the practical training and clinical legal education in Law Colleges while granting recognition and approval of affiliation. Legislatures should enact laws to establish and judiciary to develop Alternate Adjudication Mechanism through Artificial Intelligence. Such a step helps in maintaining a healthy and harmonious Bar-Bench-Academia interaction and inter- dependability.

## XXI. Legal Education –Futuristic perspectives

### A. Law Teaching

For students outside the mainstream of traditionally represented law, legal education is often marginalizing at best or effacing at worst. Women students raise the issue of invisibility or neglect. Men, heterosexuals and members of the dominant culture hear about the law in a manner that is meaningful to and supportive of them, whilst women, gay men and those outside the dominant culture do not.

Their invisibility makes their experience all the more painful. This invisibility is hardly consonant with the liberal and humane education students ought to receive from higher education. It is the responsibility of law teachers to explore those issues and areas traditionally either ignored or under-represented in law classes for exactly this reason. It is not sufficient simply to hope that students will find something of relevance to them in lectures or reading materials: we need to explicitly raise and discuss issues of how law differentially affects different groups.

These issues need to be raised in the first term of the first year of legal education and consistently thereafter through the remaining years. Students first of all need to be included in their own education and to know that they exist and matter. Secondly, students need to know and understand early in their legal education that law is not composed of a single monolithic expression of social rules but that it is rich in theory and texture. Thus, students need to hear of such areas as gender, affirmative action, social justice and legal theory, critical legal studies, poverty and the law early because then these become normalized as part of the legal education discourse.

Compounding matters of (in) visibility is the conviction of some. The fact is that we live in a multicultural society where people of differing culture, gender, class, ethnicity, sexual orientation or level of ability can and do seek legal information. As law lecturers, we are in a position to contribute to a better-informed legal profession by raising awareness of these issues in the first place. Even if most of our students do not go on to practice law, we will at least have validated the experience. By validating their experience rather acknowledging and accommodating the idea that people interpret information and experiences in a way that is meaningful to them and that this may not represent a common interpretation. Those who are outside the perceived common interpretation often feel neglected or invisible. By directly raising and discussing issues and concerns routinely neglected, lecturers and students give an important public, factual foundation to competing visions of reality. Information is made available for students to decide for themselves whether to accept all of it, some of it or none of it, but at least the choice is there to be made on an informed basis. To make legal education more inclusive and reflective of society as a whole, much work needs to be done. To being with, we can consistently integrate differing perspectives within the learning materials- whether lectures or tutorial questions – as part of the course delivery. We can include a variety of social contexts within our case studies, problems and questions. In doing so we challenge other students' tendencies to generalize and assume a common interpretation to legal issues.

Discomfort, pain and fear of ridicule have no place in the educational experience, and no place at all in a higher education system that seeks to cultivate students' personal autonomy and intellectual independence. In each of these cases we must ensure that we create a sensitive and supportive environment in which issues of gender, class, ethnicity, sexual orientation and social justice (among others) may be examined and discussed.

**B. Justice Education**

Prof. Menon while speaking on Legal Education 2020: Choices, opportunities and challenges lamented that the academic legal exercises and experiments carved out over the decades since independence have not been able to meet the ends of social justice. [National Convention on Future of Legal Education, Gangtok 10th-11th June, 2013]. Prof. Madhava Menon long ago envisaged justice education in a Law School should instil skills and values to inject a sense of accountability and responsiveness to human suffering and injustice. The curriculum should include

i) Human Rights and Democratic Governance;
ii) Sustainable Development (Economic and social);
iii) United Nations and a just world order;
iv) Professionalism and accountability.

Prof. Menon emphasizes enhancement of social justice adjudication through curriculum development and training methods of judicial academies. Judges need to take law as an instrument of social change towards achieving constitutional goals. Prof. Menon maintains that 'Right to equality' is a very powerful strategic tool provided for all three wings of the State to bring about a just society through Rule of Law. In sum the Institutions imparting instruction must have a holistic approach while integrating the legal education, justice education and judicial education to enable every Indian to secure the preambular goals.

Prof. Madhava Menon always encouraged the idea that the 'Present' should be grounded in strong realities to plan for 'Future' strategies. In such context, we need to transform 'Legal Education as 'Justice Education'. After all, 'Law' is an instrument to attain 'Justice' and hence it needs to be broadened in its construct as 'Justice Education'. Such an approach is essential to realise the ideals set in the Constitution. 'Legal Education' as 'Justice

Education' in the new millennium has to prepare the law students to become the 'frontier men' of Legal Education'.

**C. Judicial Education**

Not only must differing perspectives and social contexts be integrated into the curriculum, they must be integrated across the curriculum. Again, we need consistently to acknowledge and normalize the experiences of those outside the boundaries of traditionally represented law education. We need to evolve a comprehensive curriculum for Justice Education and Judicial Education to realize the constitutional goal.

Education means seeing what is before, in front of us and rendering it also more socially visible. That 'more' consists surely in elimination of the well-entrenched bias against law teachers and researchers in our adjudicatory cultures. It is true that law teachers may not have access to the everyday workings of court-craft or procedural aspects of administration of justice. But it must also be recognised that the labours of generations of law teachers and researchers have ensured a steady supply of qualified law graduates eligible to practise law, many of whom become judges; equally crucially, scholarly research and writing has contributed a good deal than is recognised in transforming the landscapes of democratic Indian justice. Without an appropriate recognition of such contributions, judicial education may be unfortunately subjected to an early amniocentesis!

Judicial education worth the dignity of that name entails more than judicial training. Skills and competencies enabling judges to perform their tasks with greater efficiency is of course an important aspect of judicial education; yet 'efficiency' is a virtue that ought to be related to the virtue of justice.

An 'ounce' of judicial sensitivity and sensibility is worth 'tons' of 'law' reform. If judicial education is to have future meaning at all it must endeavour maximally to present Part-IV obligations and Part IV-A duties as if this is all there is to the idea of Indian constitutionalism. Hierarchies of adjudicative power constitutively inform judicial education as judicial training.

The more the message of marginaliation and segregation is heard and the more ways in which the message is expressed through various readings, lectures, tutorials and other media, the greater the challenge to the assumption of a generalized common interpretation to law. A larger project in creating a cross-cultural and experiential law curriculum consists of re-thinking and re-designing the curriculum from a critical perspective that draws on wide and varied sources.

**D. Legal Education: Globalisation**

The future of the Indian Legal Education must include the modern ideology of law and legal education and also the technological revolution in information processing. Law is the mechanism for the constitution of fertilisation of markets, trans-national service industry, global communications, travel and business. Economically and culturally legal practice is becoming global because of fast integration of technology. The complexion of international legal practice is changing and hence international legal education begins with the rapid technological change as a revolution similar to the industrial revolution.

There is substantial connection between the law practice as in the profession and legal theory in the law Schools, then we usually admit between practice and theory. Mc. Crate report exemplifies this and the case method is a shorthand description of this concept of law and legal practice. The alternative forms of global legal education might be branding in the global educational

market place of certain law schools as providers of educated international law practitioner, as we see with regard to Health Law or Environmental Law or Intellectual Property Law. Resources and status will be of great importance in global legal education leading to ground breaking collaboration such as the joint J.D.-LL.M. degree between Harvard and Cambridge, the exploration and exploitation of the new dimensions of Cyber Space and global culture be evolved in new forms of legal education. Legal Education abroad is not only more theoretical or historical it is often complimented with specific on the job postgraduate training sometimes in a variety of settings.

These things may be possible through consortiums of Law Schools. The law students should be offered international curriculum for exposure to Foreign Law Practice through internship program or global clinics. The global legal education makes us think also about the obstacles in implementation ranging from financial resources, to the State Bar Exams and restricted reciprocity. These realities bring to the fore the latent issues of cultural bias, ideological imperialism, economic determinism and local myopia, attitudes with which we are imbued as deeply in any.

Prof. Stephen Hicks of Suffolk University, Boston said that Globalisation of legal education may broadly be stated as the value of the case method of problem solving and practical reasoning lying exactly in its being an introduction to the skills and practices of what lawyers do. But lawyers in other legal systems do not do what we do and may not agree with us.

**XXII. Strategies for Institutional Involvement – A Road Map**

In the 'First National Consultation Conference of Heads of Legal Education Institutions' held on 12.8.2002, it was pointed out as follows:

"The regulatory structure for legal education in India is currently seriously flawed and needs careful reconsideration. A typical law college has four masters at a minimum; (1) the university to which it is affiliated; (2) the State Government; (3) the University Grants Commission; and (4) the Bar Council of India… These four agencies have varying mandates, interests and constituencies and do not provide coherent guidance for the improvement of legal education in the country"

It also stated:

> "There is wide concern among legal academics that they are not adequately consulted currently by any of these authorities"
>
> "The Bar Council of India would then be responsible only for regulating entry into the legal profession and maintenance of professional standards rather than for legal education"

The members of the BCI who are practising lawyers and who get elected to the Bar Council, do not all have expert knowledge or experience for deciding the requirements of legal education for purposes other than practice in the courts. Indeed, the Bar Council is not supposed to deal with all aspects of legal education. As pointed in Sobhana Kumar vs. Mangalore University (AIR 1985 Karnataka 223) by Rama Jois *J.* (as he then was), the BCI can only prescribe minimum standards for entry into Bar whereas the universities or the law colleges can prescribe higher standards. (See also the 14th Report of the Law Commission, 1958 recommendation 25 is at page 550) and the 184th Report of the Law Commission, 2002 para 4.11). As the Advocates Act, 1961 is not intended to cover all aspects of legal education other than entry into the Bar, the Rules, Circulars and Resolutions of the Bar Council of India in relation to all other aspects of legal education

must be treated as beyond the scope of permissible delegated legislation and therefore invalid.

i. There has not been effective consultation between the Bar Council of India and the Faculty.
ii. Permissions have been granted to several law schools of poor quality
iii. Most of the eleven hundred odd law colleges and 200 Law Faculties do not compare well with the standards and curriculum required in the present age
iv. Needs of the Bar and Subordinate Judiciary are not met by the graduates from the existing 1100 and odd law schools and 200 Law Faculties.

Further, it has been noticed that in the last thirty years, ever since the NLSIU, Bangalore has been established, meritorious students from National Law Universities and other Law Schools are joining law firms and corporate houses in greater numbers than those who opt for the Bar and the subordinate judiciary. One of the objects of establishing the NLSUs was to improve the quality of the Bar and the subordinate judiciary. While it cannot be disputed that such brilliant students are necessary for leading law firms and corporate houses to meet the challenges of globalization, we should not forget that unless these students are attracted to the Bar, subordinate judiciary and academia, the quality of legal services cannot be improved.

Senior Counsel in the Trial Courts, High Courts and the Supreme Court must be generous in attracting this talent by offering them good compensation so that all of them may not get attracted to the law firms and corporate houses.

It is, therefore, clear that the present quality of most of the law colleges and law faculties neither meet the domestic needs of the profession nor the needs for the purposes of recruitment to the

subordinate judiciary. This quality should be improved by taking various steps such as bringing in better faculty and, better libraries. The law schools must be compelled to offer a large number of optional subjects to meet the needs of the present times.

Domestic needs and needs of Internationalization: Need for a new 'Regulator' with a global vision

> "The very nature of law, legal institutions and law practice are in the midst of a paradigm shift".

Globalization does not merely mean addition or inclusion of new subjects in the curriculum. While that is, no doubt, an important matter, the broader issue is to prepare the legal profession to handle the challenges of globalization and internationalization. This obviously goes far beyond preparing graduates only for practice at the Bar or for the subordinate judiciary.

The National Knowledge Commission while recognizing Legal Education as an important constituent of Professional education emphasized that the vision should be to provide justice oriented education essential to the realization of values enshrined in the Indian Constitution. Legal Education must prepare professionals equipped to meet the new challenges and dimensions of Internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift. It has also emphasized the need for original and path breaking legal research to create new legal knowledge and ideas that will help meet these new challenges in a manner responsive to the needs of the country and ideals and goals of our constitution. A separate and autonomous council for regulating all matters connected with legal Education named as Council for Legal Education and Research would better serve the purpose in realizing goals set by various recent Commissions. Setting up of such Council for Legal

Education and Research on the pattern of other existing councils is easier, faster and expedient for bringing out desired results or changes at the earliest.

The National Convention on Legal Education at Gangtok, Sikkim in its Gangtok Declaration too reiterated that autonomous Institution for Legal Academia and Legal Research should be established to fulfil objectives of Legal Education viz. i) Accessibility, ii) Equity and iii) excellence in order to achieve the fundamental objective of legal education to fulfil the aspirations of 'We the people of India'.

**XXIII. Epilogue**

It is not just that the juridical legitimization of power masks the disciplinary operation of techniques of case analysis and problem solving upon the 'active' student learner. Rather, it is also the case that the disciplining effects of this legal method actually help perpetuate the juridical representation of law as an expression of the rational, neutral and coherent exercise of power.

In Foucauldian terms, therefore, the delineation of 'law as an academic discipline' requires not only the promotion of a specific ideology, but also the deployment of a catalogue of disciplinary techniques that are in themselves inextricably bound up with the perpetuation of knowledge.

Seventy years of postcolonial Indian legal education (at least in the chronological sense as something that occurs after decolonization) have merely 'modestly developed traditions of legal scholarship'. This is so because law teachers of yesteryear and also 'specialist' colleagues in other allied social sciences and humanities disciplines' have 'by and large failed in building a research project in law with distinctly Indian problems and

possibilities.' And the 'vice like grip of doctrinal legal analysis' has rendered 'teaching and learning law' a 'self-referential enterprise in the interpretation of rules'; Indian Legal scholarship, on this view of it, remains overwhelmingly exegetic and dismally doctrinal, content merely with 'commentaries' which merely 'chart the movement of doctrinal legal trends across various fields.' As a result, legal education in India has not been successful in going beyond meeting minimal requirement of producing 'legal technicians' for a range of legal markets.' Overall, 'legal education in India' has been unable 'to respond holistically and meaningfully to contemporary challenges'.

In any further pursuit of 'enculturing law' we may perhaps want to rather anxiously revisit our distinctively very own ways of structuring pedagogic violence. This by no means an easy terrain but then no talk concerning 'enculturing law' remains worth the self-naming outside the violence of the founding myths and lived realties, whether styled with Walter Benjamin as the violence of pure means (divine violence) or with Derrida the 'foundational' and 'reiterated' violence of the 'modern' law's multifarious and poignant incarnating regimes of illegalities. Some ways of imagining the tasks of doing histories of legal education in India, as well as the globalizing Global South, and the future histories of 'enculturing law', may still carry messages of hope in all their constitutive ambiguity.

A review of the functioning of various authorities connected with legal education amply demonstrates that there is neither harmonious coordination nor effective determination of standards in law schools because of multiple controls. The present inspection and accreditation processes do not ensure quality assessment or transparency. The composition of Legal Education Committee should be so changed so as to adequately provide representation to eminent law teachers, law scholars and

educationists. Law teachers do need exposure to some better teaching techniques help build their capabilities. The National Law Universities should come forward to provide continuing education and training to the teachers both in pedagogic skills and research techniques. Academic staff college experiments are not yielding good results. Legal scholarship from the profession should be encouraged by using their expertise in law education both clinical and court centric. Attendance and continuing assessment of students should form part of the examination system and the ranking. The Universities must develop the law curriculum taking into consideration the fast-moving developments in Science and Technology, Management, Corporate accountability and Alternative Dispute Redressal Mechanism. The traditional Universities should give as much freedom as possible to the law faculties to introduce the changes in the curriculum without losing much time.

The law faculties in the Universities should play an important role in introducing new courses and implement them immediately. The traditional Universities must come forward to revitalize the practical training programme and to introduce clinical legal programme and effectively monitor the implementation of these measures by introducing credits for active participation in the programme. Bar Councils must come forward to play a significant role in streamlining the practical training and clinical legal education in Law Colleges while granting recognition and approval of affiliation.

Though Bar Council of India has assumed the role of Regulator of Legal Education in India through its Rules notified in Official Gazette on 02-01-2021, yet some may argue that the Bar Council of India is already heavily burdened with the regulation and controlling the Profession as well as inspection of several hundreds of law colleges throughout the country to inspect and grant the recognition of affiliation, it is suggested

and argued to constitute and establish an independent and autonomous Council under "All India Council for Legal Education and Research", exclusively to deal with "Legal Education and Research."

Also, there are suggestions in favour of reducing the duration of 5-years B.A.-LL.B. course to 4 years and one year exclusive by imparting Practical training in Court Rooms, Advocacy Skills, Mediation Skills etc. aiming at building the gap between Law in Books and Law in Practice. These are the pressuring demands reiterated time and again in various Seminars and Conference. The time has come to give serious consideration to the abovementioned suggestions.

According to Steven Freeland of Sydney, the next generation of lawyers will need to operate within the context of increasingly multilateral legal regulation, even over areas of law that have traditionally been regarded as within the exclusive domain of the sovereign State. Lawyers will need to become more multi-disciplinary and flexible in their training. As the world becomes smaller due to technological advances, it also becomes more complex and we have to address these demands of the next generation. Several courses which were optional have to be made compulsory. He concludes that: "the challenges of the twenty first century are daunting for humankind. Rapid developments in technology, changes in the geo-political climate, and recognition of issues of global concern, among other things, will demand that the legal processes respond in an appropriate manner".

The research output in terms of number of Ph.D.s or publication of scientific papers, seem to be not up to the mark. It is reported that we have been producing about 12,000 Ph.D.s per year in different disciplines compared to 70,000 in China and 25,700 in USA around the year 2020. This can be related to the

expenditure devoted to R & D in the budget. We have been devoting less than 1 percent of GDP (0.9) for R & D while China spends 1.4 percent. USA 2.7 percent, Japan 3.3 percent and a small country like Israel 4.4 percent. This is naturally reflected in the quantity of scientific research output. However, the quality of research output is becoming a cause of concern for many serious scientists as there is mad rush for R & D to attain economic endurance in the market rather than providing solutions to human problems.

The opportunities and challenges have arisen for educators to utilize the emerging technologies to create an interactive and collaborative learning environment for 21st Century students entering universities and law schools. The world of legal information becomes more digitized, it is critical that legal researchers in the 21st century have acquired the skills to not only effectively search for relevant legal information, but to also evaluate both the content and sources of information available. The single most important factor in promoting legal education and research is the teacher, who must be well versed with the use of technology to improve legal education and legal research. Teacher's incompetency in the use of technology is often problematic. There are some difficulties in accessing information technology by Teachers who are uncomfortable with technology. They are required to be explained the benefits of the information technology and future prospects of this technique in legal education and research. Advanced Information technology system should be provided at all the educational institutions whether controlled by the government or the private entrepreneurship and policy to that effect should also be framed by the institutions such as the UGC, Bar Council of India and the state education departments. Quality of research is deteriorating due to low quality of inputs, restricted access and plagiarism. Plagiarism is one of the main hindrances in maintaining the quality of research work. Plagiarism is the use

of another person's work for personal advantage without proper acknowledgement of the original work with the intention of passing it off as your own. Plagiarism may occur deliberately or accidentally. Plagiarism can take many forms. It includes copying material from a book; copying-and-pasting information from the World Wide Web, getting parents to help with coursework even copying answers from a fellow student during an examination is a form of plagiarism. It is suggested that some software, which are available in market, should be used to monitor and control the menace of plagiarism. Besides some exemplary penalty, may be in the form of negative marking or declaring such work as null and void, should be imposed if anyone is guilty of plagiarism. [Jeet Singh Mann]

It seems that the Bar Council stated that the law degrees awarded by The Indira Gandhi National Open University will not be recognized as Regular Law Degrees for purpose of enrolment. However, the Council said that it will recognize the Diploma given by IGNOU. It is felt that in lieu of the popularity and efficacy of Online education during Covid times the law degrees awarded by IGNOU shall also be considered with a condition that the Degrees will be awarded after compulsory practical training in the Lawyer's chamber and Court Attendance. Such a step would immensely benefit the aspiring students to fulfil their aspiration of joining the noble profession. The authors feel that this may be given serious consideration by Bar Council and other Stakeholders. The authors strongly feel that duration of 5 years for Integrated Law Courses shall be reduced to 4 years with adequate compulsory practical training so that the qualified students can join the profession at an early stage. It is also felt that there is an absolute necessity of constituting All India Council for Legal Education and Research on par with similar institutions elsewhere.

There must be a common core of transnational curriculum, there must be faculty exchanges by the use of modern technology through video conferencing. There must be exchanges among faculties for short periods. Our students and faculty must jointly be exposed to the faculty from abroad in the matter of new subjects. Students must also be allowed to go for semester exchanges to foreign universities. A new system of students obtaining joint degrees of a local and a foreign university simultaneously must be introduced and encouraged.

Serious efforts should be made to develop Alternative Adjudication Mechanism while developing Artificial Legal Intelligence. Practice theory of Law which is very essential in the present-day context is of vital importance to provide meaningful interaction between the Bar, Bench and Academia to face the 21st Century challenges to make Legal Education more relevant and rewarding to impart a World Class Legal Education in India.

Freedom in the Mind, Faith in the Words, Pride in our hearts and Responsibility in our Souls, let us pray the World's most respectable profession to adequately address the present system of the priorities in legal Education Reforms, the roles and responsibilities of various related Institutions to make legal education to reach world class standard in competitive excellence and to set an agenda to revive and rejuvenate Legal Education to cater to the needs of 21st century goals towards a socially relevant, meaningful and rewarding Legal Education.

In the age of information technology, when knowledge is only limited by one's tenaciousness in rappelling off hyperlinks, when the objective and subjective are accessible at a scale unprecedented in human history, and when free expression is seen no more as a privilege but as fundamental right that even dictators must at least pay lip service to, it is paradoxical to even conceive that truth – or a description of the world as it really is

– has ceased to be important. Post-truth, when seen this way, doesn't necessarily point to bleakness but rather suggest that we may be on the edge of completely overturning our sensibilities on what constitutes 'objectivity' or 'knowledge'. The present pandemic highlighted the importance of technology and its successful outreach which is unheard of.

It is apt to quote Khalil Gibran in this context who says;

No man can reveal to you aught but that which already lies half asleep in the dawning of your knowledge.

The teacher who walks in the shadow of the temple, among his followers, gives not of his wisdom but rather of his faith and his lovingness.

For the vision of one man lends
Not its wings to another man. (Khalil Gibran)

I conclude this article with the words of Dostoevsky

"A challenging mankind's indifference to the suffering humanity is crucial if law has to fulfil the agenda of justice. Everyone is responsible to everyone for everything".

NOTE: This essay is based on the Articles written and Lectures delivered by me. I place on record my grateful thanks to the authors, named and unnamed, whose articles are liberally quoted.

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## Chapter - 2

# ROLE OF LEGAL AID CLINICS: TAKING LAW TO THE PUBLIC

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## I. Introduction

In the twenty-first century, societies are progressively becoming Knowledge Societies. The citizens are becoming Knowledge Networkers who are better informed about local and global affairs. Such citizens are transmitting knowledge to the common man for overall development of such groups and society at large. Their acts are supported by a solid foundation of information that is universal, objective, timely, and derived from a variety of sources. One of such Knowledge transmitting component is in the form of Legal Aid Clinics. Legal Aid Clinics involving law students along with a retaining advocate is a unique mechanism for imparting legal knowledge and awareness in the society. People are becoming more conscious of their rights and options.

The ethos of Article 39A of the Constitution of India strongly believe that law is *pro bono public i.e.*, for the public good. However, it is not restricted in its scope by merely providing pro bono litigation. It also strongly believes in educating people about their legal rights and thereby endeavours to undertake legal literacy initiatives, spread social awareness, promote alternative

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dispute resolution, conduct prison reformation activities and other related activities. This is done by means of various social media and real-life campaigns and events and is aimed towards creating a more legally conscious India.

In undertaking these initiatives, the clinic provides a platform for the students to engage in serving their community by promoting legal awareness, increasing the accessibility to the justice system through various programs and attaining certain standards of legal education. However, there are times when the term "legal aid" is confined to the legal aid clinics opened at various law colleges and universities. Presently keeping in the role played by legal aid clinics at grassroot level, the courts with co-operation of government are opening legal aid clinics at remote and backwards areas. With the passing time the role and function of legal aid clinics are increasing.

## II. Statement of Problem

There is a mandate to have a Legal Aid Clinic at every law college and university. Any college or university which gets affiliation by Bar Council of India has a separate room designated as Legal Aid Clinic. However, in majority of cases such Legal Aid Clinic is confined to that particular room for one reason or other. There are very few law colleges and universities which actually have a functional Legal Aid Clinic. It is very vital to have a proper functional Legal Aid Clinic so that the object with which this component has been introduced in legal education can be fulfilled.

## III. Objectives

The present paper is proposed to be written in the backdrop of mandate of having a functional legal aid clinic for every law school/college and active participation of students on social

platform. The present research paper has been written to achieve following objectives:

i) To trace back the concept of Legal Aid Clinic in law colleges and universities
ii) To critically analyse the role of Legal Aid Clinic
iii) To analyse the importance of Legal Aid Clinic
iv) To suggest certain measures for effective working of legal aid clinic

## IV. Research Methodology

For the present research work the doctrinal methodology has been applied. A research based on analysis of case laws, statutes by applying logic and reasoning power has been applied. Present study is evaluative and critical in nature. The researchers have taken the help of both primary and secondary sources. The secondary sources include articles, books, journals, newspapers and websites.

## V. Hypothesis

For the present research work the hypotheses has been formulated:

i) The legal aid clinic plays an important role in the field of legal education.
ii) The legal aid clinic plays an important role in taking law to general public.

## VI. Universe of Study

The present study covers the origin and development of legal aid clinics. The study will cover the impact of legal aid clinic on legal awareness. The concept of legal aid clinic in other

countries is also within the purview of this study. For these purpose landmark judgments of various High Courts and Supreme Court upto June 2021 have been covered.

## VII. Concept of Legal Aid Clinic

Justice is the centre of Constitution as well as judicial system established under Constitution. The preamble to the Constitution establishes to provide justice to all and for that it is important that all should have access to justice. To inculcate the sense of responsibility which an advocate bears and to connect oneself with the society, the Bar council of India thought of introducing clinical education in legal education.

The Preamble to India's Constitution aims for social, economic, and political equality. The directive principles of state policy are used to further clarify, enhance, and concretize the goals and objectives expressed in the preamble. In order to advance equal justice, Article 39-A of the Indian Constitution requires the State to maintain the proper operation of the judicial system. In particular, the state is required to offer free legal aid through proper legislation and programmes or to ensure that no citizen's access to justice is restricted because of their financial condition or other limitations. The legislature developed the Legal Service Authority Act after the courts took judicial notice of the issue in a number of cases.[1]

On the basis of place of operating the Legal Aid Clinic can be divided into two:

i) *On-campus clinic*: This clinic is the most straightforward to set up. If a college wants to launch an on-campus clinic, it

[1] David W. Tushaus, Shailender Kr. Gupta & Sumit Kupoor, *India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice*, ASIAN JOURNAL OF LEGAL EDUCATION 2(2) 102 (2015).

must first choose a location inside the college's grounds where the clinic can function. To begin, a space with the bare minimum of office furniture would suffice. Because the Clinic would be housed on campus, computers, printers, stationery, and other necessities could be easily obtained from the College.

ii) *Off-campus Clinic*: Any clinic that operates outside of the college's campus is referred to as an off-campus clinic or a "community clinic," because most off-campus clinics are located in the community that the clinic intends to serve. Once the College has determined the geographic area in which they intend to deliver Legal Aid, they must investigate the possibility of establishing a Clinic and find an appropriate location.

## VIII. Importance of Legal Aid Clinic

### i) Practical training to law students:

Establishing Legal Aid clinics is a compulsory component of legal education in India. It is not Legal Aid but Legal Aid “Clinic”. The term clinic means a place where some treatment or advice of some nature is given. Hence it implies giving or imparting practical knowledge. In legal aid clinic activities beside para-legal volunteers, almost all the students are engaged. The legal aid clinics used to organize and conduct a number of activities such as organizing legal aid clinics, legal awareness camps, conducting socio-legal surveys, jail visits, slum visits etc. in the course of such activities law students get a practical training of implementation of law in society. They get an exposure about implementation of law in the society.

**ii) Students engaged in DALSA/SALSA/NALSA activities:**

The mandate provides that Legal Aid Clinic in any law college and university be established under State Legal Services Authority. The State Legal Services Authority further operates under National Legal Services Authority. A number of legal activities initiated by NALSA/SALSA/DALSA are being implemented in collaboration of various Legal Aid Clinics. Such authorities are in constant touch with various Legal Aid Clinics. The students are roped in for such activities either as participants or as organizers. In both cases students get a good exposure of practical training.

**iii) Educating common man about legal aspects:**

Beside educating students, legal aid clinics played a great role in educating common man about various legal rights and duties, various laws, giving then legal advice etc. Legal Aid Clinics played a great role in taking law to public.

**iv) Reducing the gap between law and society:**

Legal Aid Clinic acts as a bridge between law and society. It reduces the gap between law and common man. The main object of Legal Aid Clinic is to take law to the community through its various programs like legal aid camps, awareness camps, surveys etc. It ensures accessibility of justice to each and every person.

## IX. Legal Aid Clinics in other countries

Though clinical programmes focusing on legal aid to the poor began in the United States and India in the 1960s, the

clinical programmes in the United States are far ahead of those in India. Legal Aid Clinics were founded in law schools around the United States as early as 1920. The Carnegie Foundation for the Advancement of Teaching characterized the situation at law schools, pointing out that, in comparison to medical and technical education, legal education lacks clinical facilities. During the 1930s and 1940s, legal scholars expressed similar views, claiming that law schools failed to prepare law students who were suited for the profession, and praising the efforts of clinical legal education in enhancing skills and aiding the poor.[2] Clinical programmes in the United States were first funded by the federal government, and now, most law schools in the country have well-developed and organized clinics that provide a variety of legal services to the public. Clinics at schools with the assistance of trained practicing lawyers[3]. In the United States (US), where law school clinics are often supervised by state regulations that permit students to practice law under the supervision of an attorney, there is no such restriction. These regulations differ from one state to the next. Students in the United States face limitations in terms of cases in which they can be involved, as well as educational opportunities.[4]

Legal Aid Clinics in Uganda must register with the government in order to provide legal services. Students at law school clinics in the Kyrgyz Republic can represent individuals in civil cases. In civil processes, a license is required, but not in criminal proceedings.[5]

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[2] file:///C:/Users/DELL/Downloads/a_study_of_law_school_based_legal_services_clinics%20(1).pdf (Last Visited on 12 January 2021)

[3] *Ibid.*

[4] David W. Tushaus, Shailender Kr. Gupta & Sumit Kupoor, *India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice*, ASIAN JOURNAL OF LEGAL EDUCATION 2(2) 101 (2015).

[5] *Ibid.*

In South Africa, Legal Aid Clinics were formed with the dual goals of providing legal assistance and increasing access to justice while also teaching law students practical skills. During the 1970s, law clinics were founded in South Africa to assist victims of apartheid and human rights violations. In 1972, law students at the University of Cape Town created the first legal aid clinic in South Africa, which is still run by students under the supervision of legal practitioners from outside the university. By 1981, 14 South African universities had developed clinics. Almost all law schools and law schools at universities now provide Law Clinics. Directors of these clinics are practising attorneys or advocates. Few universities hire Clinic staff on a contract basis.[6]

The clinical movement began in Australia in the 1960s as a new teaching method to supplement the case method of law instruction. The Clinics were developed by Monash University, La Trobe University, and the University of New South Wales. These efforts, on the other hand, were totally voluntary. In 1987, the university sector was established. Several significant Clinical Programs were established in the mid-1990s in various universities.

## X. Mandate of Legal Aid Clinic in Law Colleges/Universities

At the present Legal Aid Clinic is a compulsory component in legal education. However, the journey of making it mandatory is neither quick nor easy. The three Committees had been formulated that stressed on the need of introducing legal aid component in Law Schools through Legal Aid Clinics in offering free Legal Aid. The first very initiative started in 1970's with the Report of Expert Committee on Legal Aid. "Processual Justice to the People" which was submitted in 1973. The second step was in the form of Report on National Juridicare: "Equal Justice – Social

[6] *Supra* note 2

Justice in 1977." The last step in this direction was the Report of the Committee for Implementing Legal Aid Schemes in 1981. All three committees were affirmative for creating networks of Legal Aid groups in various places like Court premises, law Colleges and universities, community organizations, private and public agencies and organs of Local Government.

Presently Bar Council of India is the apex body governing all the law colleges and universities in India. The Bar Council of India did not appear to have given clear thought to the nature, substance, and method of practical training it wished the universities/colleges to provide under the Advocates Act when it adopted the regulations for reforming legal education in 1982. A curriculum that is suggested is hardly adopted by few universities and colleges with a sincere effort. Such curriculum provided for clinical experiences to law students through the organisation of moot courts, mock trials, and legal clinics and co-circular activities including writing exercises, advocacy classes, and court visits.[7]

Due to insincere and non-professional approach to legal education, the Bar Council of India, the Indian Judiciary, the Karnataka State Bar Council and the Government of Karnataka decided to establish a national level law school in 1988, with a small number of students who chose the legal profession as a career. Though current norms put up by the Legal Education Committee of the Bar Council of India were made as the minimal points of reference, the law school was granted full liberty in terms of establishing academic curriculum, including teaching pedagogy, to meet foreign legal educational standards. This experiment was proved to be viable since it significantly improved

[7] Dr. Vijender Kumar, *Clinical Legal Education During Covid-19 Pandemic: Issues and Perspectives*, ILI LAW REVIEW, Special Issue 2020, p. 245

the quality of the legal profession, resulting in increased client satisfaction.[8]

The Bar Council of India finally introduced legal aid as compulsory component in law colleges and universities in 1997. According to the Legal Education Rules, 2008 issued by Bar council of India[9], each law college or university shall develop and operate a Legal Aid Clinic under the supervision of a Senior Faculty Member who may administer the Clinic. The clinic will be run by the Institution's final year students with the Senior Faculty Member in collaboration with State authorities. Legal Aid Clinic includes a list of volunteer lawyers and other non-government organizations. For the purpose of assisting those in need of legal assistance and interacting with students and professors, trained paralegal volunteers may be assigned to legal aid clinics in law colleges and law universities.

The State Legal Services Authorities will undertake periodic evaluations of how legal assistance clinics established in law colleges are operating. The State Legal Services Authorities are responsible for collecting monthly reports from the District Legal Services Authorities, law firms, and universities of law. They also have to look into how legal assistance clinics located within their jurisdiction are managed. Periodic reviews of the operation of such legal aid clinics shall be conducted by the State Legal Services Authorities at least once every three months, if not more frequently.

Law colleges and law universities may potentially establish permanent legal aid clinics as part of the National Legal Services Authority (Legal Aid Clinics) Scheme, 2010. The establishment of such legal assistance clinics must be reported to the State Legal

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[8] *Id.* at 246

[9] Under schedule III-Physical Infrastructure, entry 11

Services Authority. The main goal of this Scheme is to offer free legal services to the underprivileged, weaker groups, and those residing in remote locations, including those that are geographically isolated from centers of justice and offices of societal institutions that provide legal services, as specified in Section 12 of the Legal Services Authorities Act of 1987. The State Legal Services Authority will provide the necessary technical assistance and will coordinate with the legal aid clinics that have been created. National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 lays down the rules for the establishment and working of Legal Aid Clinics in localities to be opened and managed by State Legal Services Authority and the same rules apply for the working and functioning of Legal Aid Clinics established in law colleges and universities[10]. The main features of National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 are as following:[11]

i) Legal aid clinics formed by the Legal Services Authorities must be positioned in a place that is easily accessible to the area's inhabitants. The ideal location for this would be a room inside the administrative complex of a local body organization, such as a village panchayat.

ii) There must be a sign board which vividly identify the legal aid clinic in both English and the local language. The hours and days of operation of the Legal Aid Clinic shall be visibly indicated on the board.

iii) The Legal Services Authorities must persuade local organisations to offer a facility for the functioning of legal

[10] Rule 21, National Legal Services Authority (Legal Aid Clinics) Scheme, 2010

[11] http://chdslsa.gov.in/right_menu/schemes/pdffiles/legal_aid_clinic.pdf (Last Visited on 15 January 2022)

aid clinics, including village panchayats, mandals/block panchayats, municipalities, corporations, and others.

iv) There must be one or more para-legal volunteers at legal aid clinic who will be available during its working hours.

v) The Qualified legal practitioners may be selected from local bar for offering services in the legal aid clinic. Such practitioners must have experience in resolving the disputes in amicable manner. Paralegal volunteers accredited by the Legal Services Authorities and carrying a Legal Services Authorities identity card may be roped in to assist such practitioners in delivering legal services in legal aid clinics.

vi) Legal Aid clinics must be directly administered by the nearest Legal Services Authority within its territorial jurisdiction. All legal aid clinics operating within the district will be subject to the District Legal Services Authority's general supervision and advice.

vii) Lawyers and paralegal volunteers who volunteer at legal aid clinics must keep track of their presence in a register kept at the clinic. Every legal aid clinic must keep a register that includes the name and address of the people seeking legal help, the name of the lawyer who provides legal services in the clinic, the nature of the service provided, the lawyer's remarks, and the signatures of the people seeking legal help and the lawyers.

viii) Legal Services Authorities may delegate Para-Legal Volunteers to operate in legal aid clinics to help lawyers and legal assistance seekers.

ix) The rules of the preceding paragraphs apply mutatis mutandis to student legal aid clinics established by law colleges and universities. Students in final year classes may, however, provide legal services in such clinics, with junior students assisting them. Students' legal aid clinics must always be supervised by a faculty member who is present in the clinics for immediate consultation. Other legal aid clinics developed under this model are also available to law college and university students.

x) The students of the law colleges and law universities may also adopt a village especially in any remote areas and organize legal aid camps in such villages. The students may make use of the legal aid clinics set up under this scheme in consultation with the legal services institution having territorial jurisdiction in that area.

xi) The student legal aid clinics working in the remote areas may also conduct surveys of the legal services required by such people including identification of the problems which call for a social justice litigation. For conducting such surveys, the members of the student legal aid clinic can take the assistance of the para-legal volunteers and voluntary social welfare institutions working at the grass-root level.

xii) Apart from the student legal aid clinics in the rural areas, the law colleges and law universities may also set up permanent legal aid clinics in their institutions. It is compulsory to inform the State Legal Services Authority regarding the establishment of such legal aid clinic. The State Legal Services Authority shall render the required technical assistance for such legal aid clinics and shall further co-ordinate with such established legal aid clinics.

xiii) Trained para-legal volunteers might be deputed to the legal aid clinics established in law colleges and law universities to assist the seekers of legal aid and also to interact with the students and faculty members of such college or university.

xiv) Periodic reviews of the functioning of legal aid clinics will be conducted by the State Legal Services Authorities. The State Legal Services Authorities are required to have monthly reports from the District Legal Services Authorities, law colleges, and law universities for reviewing the operation of legal aid clinics in their jurisdiction.

**XI. Legal Aid Clinic at Villages**

Traditionally the term and concept of Legal Aid Clinics are associated with law colleges and universities only. However, with the changing time and responsibilities of State has also changed. In the recent years, there is movement to address the needs of marginalized groups and to impart justice to them. In pursuance of this National Legal Services Authority is aimed at taking law to the community by starting Legal Aid Clinic at villages. The National Legal Services Authority, India's primary agency for overseeing legal aid programmes, has taken a step ahead by establishing legal aid clinics to provide legal aid at the grassroots level. The National Legal Services Authority (Legal Aid Clinics) Scheme, 2010, was created by the National Legal Services Authority. The programme was approved during a meeting of NALSA's Central Authority on December 8, 2010. The scheme's principal goal is to provide legal services to persons from the

marginalized and weaker sections of society. These individuals do not have access to traditional legal services.[12]

The District Legal Services Authority is required by this scheme to build legal aid clinics in all villages or a cluster of villages, depending on the size of such communities. During the working hours of the legal aid clinics, one or more paralegal volunteers are required to be available in such legal aid clinics.

Qualified legal practitioners with experience in resolving disputes amicably may be chosen from the local bar for empanelment to work in the legal aid clinic. The nearest legal services institution with geographical jurisdiction will be in charge of selecting lawyers. Women lawyers with at least three years of experience will be given preference. The District Legal Services Authority will get a list of the panel lawyers. Paralegal volunteers educated by the Legal Services Authorities and carrying a Legal Services Authorities identity card may be hired to assist lawyers in delivering legal services in legal aid clinics.

The legal aid clinic will offer a wide range of legal services apart from giving free legal aid. The legal services offered by the legal aid clinic shall also include other services like preparing applications for job cards under the MGNREGA Scheme, communicating with government offices and public authorities, and helping regular people who visit the clinic to resolve their problems with officials, authorities, and other institutions. The legal aid clinic will function as a one-stop shop for underprivileged people seeking assistance with matters involving the application of the law. Legal aid clinics will be overseen directly by the nearest legal services organization with geographical authority. All legal

[12] file:///C:/Users/USER/Downloads/legal_aid_clinic%20sch%202010.pdf (Last Visited on 18 December 2021)

aid clinics functioning in the district shall be supervised and advised by the District Legal Services Authority.

The provisions in the aforementioned paragraphs shall, mutatis mutandis, apply to the student-run legal assistance clinics established by law colleges and law universities as well. However, in these clinics, senior students may provide legal services while receiving assistance from junior students. The faculty member who oversees the student legal aid clinic must be present at all times to provide immediate consultation.

Law students from law schools and universities could be solicited to adopt a village, particularly in rural areas, and organize legal aid camps. In consultation with the legal services institution with territorial jurisdiction in that area, such students may access the legal aid clinics established under this system. Students in legal aid clinics might seek the help of paralegal volunteers in the clinics.[13]

**XII. Role of Legal Aid Clinics:**

Justice Ranjan Gogoi, the former Chief Justice of India addressed the 17th all-India meet of State Legal Services Authorities marked that justice must reach the remotest areas of the nation and to the last person. He insisted on increasing student's involvement in legal aid activities and using their potential as ambassadors of the mission of access to justice.[14]
As per the statistics of NALSA, there have been 13,459 legal services clinics operating in India as on 31 December, 2020. Out of which 6215 are operating in villages, 1117 in community centers, 1134 in jails, 104 north- east, 870 in law colleges and

[13] file:///C:/Users/USER/Downloads/legal_aid_clinic%20sch%202010.pdf (Last Visited on 18 December 2021)
[14] https://nalsa.gov.in/library/17th-all-india-meet-of-state-legal-services-authorities-17th-18th-aug-2019-at-nagpur (Last Visited on 20 December 2021)

universities and 2692 in others areas[15]. In the year 2020, around 13,083 people were provided legal assistance by the legal aid clinics established by la colleges and universities.[16]

However National Law Schools which are regarded as the best and most prestigious institutes for legal education in India, perform not so well when it comes to giving legal aid to the underprivileged. As per research conducted on Six National Law Schools in different seven states, revealed that National Law Schools are not implementing the mandate of Legal Aid Clinic in proper and systematic Manner.[17]

Covid-19 in general hit hard the legal education especially the clinical education including functioning of Legal Aid Clinic. With the announcement of lockdown in March 2020, most of the colleges and universities were closed. Thus, legal aid activities suffered a roadblock during the pandemic. However, even at this point of time few institutions well understood its responsibilities and continued to work via online mode by organizing various online awareness program and set an example for others.

The Virtual Law School was established by Dr. Nachiketa Mittal and runs similarly to a typical law school by holding classes when the majority of law schools are closed due to an epidemic. Although it is not every law institution approved by the Bar Council of India (BCI) that is permitted to impart online legal education. Dr Mittal further launched the Virtual Legal Aid Clinic (VLAC) with a view to fulfil the mandate of Legal Aid Clinic in legal education. With this milestone effort it became India's first virtual law school clinic. This flagship program was started off on 2

[15] https://nalsa.gov.in/library/statistical-snapshot/statistical-snapshot-2020 (Last Visited on 20 December 2021)
[16] *Ibid.*
[17] file:///C:/Users/DELL/Downloads/a_study_of_law_school_based_legal_services_clinics%20(1).pdf (Last Visited on 12 January 2021)

August, 2020 with its inaugural. The legal practitioners from different parts of the nation are offering their services in this virtual clinic. In the pandemic times, it became inconvenient for the law students to visit courts or the adjacent locations for getting real-world experience in client counselling and interviewing and also for providing legal assistance. In such a situation VLAC addressed the void created by the pandemic by offering the same type of training to law students online with the support of experienced lawyers.[18] The virtual Law College and Virtual Legal Aid Clinic has taken the concept of Legal Aid Clinic to the next level. This will not only boost legal aid work during pandemic but it will also raise the level of clinical legal education as part of BCI's legal education mandate.

Taking inspiration from this various reputed law colleges and universities also opened and inaugurated virtual legal aid clinic in order to continue legal aid activities even at pandemic times. In June 2021 University Institute of Legal Studies (UILS) at Panjab University also inaugurated the virtual legal aid clinic.[19] Many other universities though not separately started virtual legal aid clinic but organized various awareness programs via online mode.

## XIII. Hurdles in the Effective Functioning of Legal Aid Clinics

By analyzing the present role and functioning of Legal Aid Clinic in the present scenario, it is clear that Legal Aid Clinic operating at law colleges and universities are facing various hurdles in its smooth functioning. Such hurdles can be discussed as following:

[18] https://www.barandbench.com/apprentice-lawyer/virtual-legal-aid-clinic-to-be-inaugurated-on-august-2 (Last Visited on 20 January 2022)

[19] https://timesofindia.indiatimes.com/life-style/spotlight/virtual-legal-aid-clinic-inaugurated-at-pu/articleshow/83876411.cms (Last Visited on 20 January 2022)

i) **Lack of funds:**

Most of the Legal Aid Clinics suffers from the problem of scarcity of fund. Most of the activities do not find the light of day due to lack of funds. A provision should be made where some of the activities if got pre-approval from SALSA or DALSA should be sponsored by them. It will definitely improve the nature and standard of activities being carried on by the Legal Aid Clinics established under various law colleges and universities.

ii) **Lack of appropriate time:**

Law colleges and universities are already over-busy and burdened with various curricular and extra -curricular activities like moots courts, national seminars, conferences, internships, court visits, cultural functions etc. in such a scenario not plenty of time is spared for Legal Aid activities. Due to insufficient time the Legal Aid Clinic remained passive in most of the institutions.

iii) **Teacher's inability to practice or involve in advocacy:**

There is an in-built limitation in the effective working of Legal Aid Clinic in India in the form of inability of teachers to practice or involve in advocacy. As it is mandatory condition for pursuing teaching as profession to surrender the license of advocate. In such a scenario the teacher associated with Legal Aid Clinic can hardly do more than a supervisory and advisory role.

## XIV. Conclusion and Suggestions

Establishing Legal Aid Clinic is a compulsory component of legal education in India. The importance and role by Legal Aid

Clinic clearly establishes its relevance. The legal Aid Clinics not only impart clinic or practical knowledge to the law students but expose them to the real world where the law actually operates. It helps them to understand that law is not only for the group or section of people who can afford good advocates but justice equally belongs to the downtrodden or marginalized section of the society who is not in capacity to represent them. It is also the responsibility of advocates and society at large to legally aid them. The other side of Legal Aid Clinic is to empower the common man in terms of legal awareness and legal aid. Legal Aid Clinics have always been at front to take law to the common man. However, with the passage of time the expectations from Legal Aid Clinics have also been changed and legal aid clinics have reached to the next level of imparting practical knowledge to law students as well as to the society. Many organizations have proved themselves even in the testing times of pandemic like there are examples like Virtual Legal Aid Clinic, Punjab University (UILS) etc. There is a need to empower the Legal Aid Clinics and to have regular check on their working.

Following are some of the suggestions to make the working of Legal Aid Clinics more effective:

i) Bar Council of India should recognize only those Law Colleges and Universities where Legal Aid Clinics are established and working according to the rules laid down by National Legal Services Authorities.

ii) The State Legal Services Authority should appoint any one or more persons who will visit the established Legal Aid Clinics in the concerned State. Such authorities will see whether the Legal Aid Clinics established are working effectively or not.

iii) Along with para legal volunteers, more students should be trained formally through the workshops organized by SALSA/NALSA. They should be trained not only to give legal advice but also to make parties to reach at certain conclusion through amicable means.

iv) One or more teachers should also be trained to run the Legal Aid clinics more effectively. Teacher associated with Legal Aid Clinic should be given formal training in mediation and conciliation.

v) Necessary amendments should be made in Advocates Act, 1961 to enable the faculty and students of final year who are associated with Legal Aid Clinic to represent themselves before court of law in limited cases.

vi) Another area by which Indian clinics can be improved is by allotting it the "course credit". Clinical Legal Education can be made an elective subject so that students can receive credit for their work in a clinic. Credits will serve as a substitute for cash. Students will get drive and a sense of responsibility as a result of this.

## Chapter - 3

# HOW TO PREPARE AND DELIVER A LECTURE?

*V. K. Ahuja**

## I. Introduction

Teaching is a serious affair which requires lot of skills in a teacher. A teacher should not only be well read but also know the skills of delivering lectures to the students in the most meaningful manner. Effective delivery of a lecture is an art. However, preparing a lecture in a structured manner to make it more meaningful for students is equally important. Therefore, preparation of lecture and delivering it to students are the two most important things, a teacher must work on.

A teacher is remembered by his students because of his teaching. A good teacher commands respect all the times. Many a times, the students from other sections sit in the class of teacher who is known for his good teaching. A good teacher enjoys good reputation in his/her college or university and becomes favourite of students. In all probabilities, there is no indiscipline in the classrooms of such teachers as the students are interested in listening to the lecture.

This paper deals with two parts. The first part will deal with how to prepare a lecture? A brief sample lecture will also be provided in this part to explain it, whereas in the second part,

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discussion will be made about the delivery of lecture and dos and don'ts for the teachers. This paper is not on various methods of teachings which may be prevalent today. This paper is primarily based on the experience of author as a teacher and student and the training programs the author participated in.

## II. How to Prepare a Lecture?

In most of the educational institutions, teachers teach through "chalk and talk" mode. It is a traditional and popular mode of teaching. There are two very strong reasons of its adoption and the same are its cost-effectiveness to institutions and its wide acceptability among students. It, however, has some health hazards also as the dust spreads when the teacher cleans the blackboard with duster. In the modern times, some of the educational institutes have replaced blackboards with white boards. A teacher writes on white board with a marker. Though this is little expensive but better than blackboard system as it does not produce dust. The method of teaching remains the same whether it is blackboard or white board. The other way of teaching is through power point presentation (PPT). For this, LCD projectors are required in the classrooms. There is one more way of teaching, i.e. case method of teaching which is prevalent in few educational institutions such as University of Delhi. There are many other modes and methods of teaching such as teaching through flip classes, clinical legal method, co-operative teaching method, problem solving methods, gamification, etc.[1] This article will be confined to "chalk and talk" mode; PPT mode of teaching; and the case method of teaching. I will first of all discuss about the preparation of lectures in the "chalk and talk" mode of teaching.

[1] For more details, G. S. Bajpai and Neha Kapur, *Innovative Teaching Pedagogies in Law: A Critical Analysis of Methods and Tools*, 2 CONTEMPORARY LAW REVIEW 91-110 (2018).

**A. Preparation of Lecture through "Chalk and Talk" Mode**

It is very important to prepare a lecture in the systematic manner in order to make it more meaningful for the students. It is often seen that there are many teachers who are very knowledgeable and sincere; but their lectures fail to leave any impact in the classroom. The reason may be that their lectures are not structured in a proper manner. Further, some teachers read a lot before going to class and simply start in class rooms with what they read. They miserably fail to impart knowledge they possess for the reason that their lectures were not structured at all. There are teachers who possess good communication skills. But some of such teachers do not possess good subject knowledge but know how to play with language and impress students. This is quite dangerous because they cannot make fool of students' time and again. It has also been seen that some of the teachers carry with them age old notes and teach the students from the same. It is a matter of great concern as these notes are never updated and the students are taught obsolete law. Such teachers do not command respect from students.

Teaching should be done in the light of contemporary developments and not in isolation to the extent possible. While doing a course some two decades back on "Law Teaching and Legal Research Skills" at Cardiff University (UK), I had the opportunity of sitting in the classroom of LL.B. students to observe how the teachers teach there. The classroom had an overhead projector, LCD projector and podium with touch screen to make PPT. The teacher at the time of starting the lecture, showed some slides which she made from some headlines of the newspapers on some latest news related to subject to be discussed in the class. Thereafter she started her lecture connecting with those news and making it more interesting and meaningful for the class. The entire lecture went

very smoothly. In India, unfortunately, most of the educational institutions do not have the necessary infrastructure even today, the mode of teaching may however be applied in the simple chalk and talk method of teaching.

To be meaningful, a lecture is required to be properly structured. It does not matter how many books a teacher reads for the class, what matters is how he/she conveys the knowledge to the students. A lecture may become very effective if a teacher keeps in mind certain small things while preparing a lecture for the class.

First of all, a teacher must write topic of the discussion on the blackboard and should not erase till the end of his lecture. He can erase rest of the things written on blackboard but not the topic. The reason is that late comer students will be able to know what exactly is being taught in the class.

Secondly, a teacher should give outline of the lecture in the beginning. This will give an idea to students about what is going to be discussed in the lecture. In case the attention of any student is diverted for some time, he will still be able to know what issue is being discussed, as he had an idea about the lecture as outlines of the lecture were already given in the beginning. Otherwise also, this will help students to understand the lecture in a better manner.

Thirdly, in between the lecture, the teacher must establish where he/she is? While moving from one point to another, the teacher must indicate that he/she is now moving from present point to the next point. Before moving to next point, the teacher must ask students if they have any question with respect to previous point. Take up their questions before moving to next point. By doing so, the students will be aware that the last point is over and now the discussion will take place

on the next point. Those who were not attentive for some time, must immediately know that the discussion on the previous point is over. Many a times, the student loses track of the lecture or is mentally absent, but the moment teacher tells him/her that he/she is moving to the next point, the student may become attentive and hear to the next point carefully. This is how a teacher has to establish himself/herself in between the lecture where he/she is.

Lastly, the teacher should not end the lecture abruptly. He/she must sum up the entire lecture briefly. The benefit of doing so is that students may be able to get the missing links in the lecture. The students may also clarify their doubts, if any, with respect to an issue before the lecture ends. This also acts as a brief revision of the entire lecture for the students.

Thus, the students may be benefitted immensely if the lecture is delivered in structured manner as discussed above. In order to understand the above points, a sample lecture is prepared hereunder. It is important to note that this is just a sample lecture for the sake of guidance only. The topic of "sources of international law" discussed in the sample lecture is very wide and has to be taught in much detail.

**SOURCES OF INTERNATIONAL LAW**

Hello everybody. Today we are going to discuss the sources of international law. First of all, I'm going to outline the sources of international law. Then we'll move on to examine various sources of international law. First of all then, what are these sources of international law? Well, according to Article 38(1) of the Statute of International Court of Justice, there are two categories of the sources of international law – primary sources and secondary sources.

Now, there are three primary sources of international law. These are (1) treaties, (2) customs, and (3) general principles of law recognized by civilized nations. Then, secondary sources are judicial decisions and juristic opinion of the most highly qualified publicists of the various nations.

Now, if we go back for a moment to the primary sources of international law, we find treaties to be the most important source of international law. Treaties can be of two kinds – bilateral treaties and multilateral treaties. Bilateral treaty operates between two states whereas in case of multilateral treaty, there are many states which are parties to it. Treaties have codified the international law to a great extent.

If we go back for a moment to primary sources of international law, the second primary source is customs. Customs were the most important source of international law till the first half of nineteenth century. Customs mainly operate in absence of treaty law.

Now let me explain to you the essentials of a custom. There are three essentials of a custom. The first of these three essentials is – uniformity. This means that a custom should be uniform throughout. The second essential is consistency, which means that there should be no inconsistency in the practice of a custom. The third essential is *opinio juris sive necessitatis,* which means that states follow a custom as an obligation. After treaties and customs, the third primary source is general principles of law recognized by civilized nations. The general principles recognized by all major legal systems fall under this category.

Now before I move on to secondary sources, do you have any question regarding any of the primary sources.

Now we move on to secondary sources which consist of decisions of the international courts and tribunals and juristic opinion.

As far as judicial decisions are concerned, they are not having binding force as precedent as we see in national courts. A judgement passed by international court is having binding force only among the parties to the case. However, a judgement of the international court may have normative value in absence of primary sources of international law.

Looking at the other secondary source i.e. juristic opinion of most highly qualified publicists of the various nations, we can see that opinions of jurists may be useful in law making process, where there is no international law on a particular subject.

To sum up then, sources of international law can be divided into two categories – primary sources and secondary sources. Primary sources include treaties, customs and general principles of law recognized by civilized nations, whereas secondary sources include judicial decisions and juristic opinion. Secondary sources are important in the absence of primary sources as they are considered as subsidiary means for the determination of rules of law.

**B. Lecture through PPT**

Power point presentation (PPT) is extensively used in seminars, conferences, workshops, faculty development

programs, etc. Some teachers, however, prefer to teach in the class rooms through PPT. One can teach through PPT only when the educational institution has the facility of LCD projector. Unfortunately, this facility is not available in all classrooms of the educational institutions, barring a few one. Few of the government institutions, such as IIMs and IITs, a very few of central and state universities, and some of the private universities charging very high fees may be having this facility in all the classrooms. This mode of teaching, therefore may be confined to the aforesaid institutions. However, in other institutions also where limited facility is available, the teachers sometimes deliver lectures through PPT using those facilities.

There are some benefits of teaching through PPT. **First** of all, everything you want to discuss in the classroom is already present in the PPT in pointers, meaning thereby that you will not miss even a single point while teaching. In chalk and talk method, you tend to forget certain points which you wanted to discuss in the class unless you write them on a paper. **Secondly**, you keep the students attentive throughout the lecture through your slides as the students are not only listening to you but also watching the slides. **Thirdly**, the data is shown effectively on slides through pie chart, table or diagram, etc. Last but not the least, there is no issue of communication gap as such. If some students failed to understand what the teacher spoke, they could correlate it by having a look at the slides.

There are certain shortcomings also of this system of teaching. **Firstly**, in many cases the students find it difficult to read from slides, listen to teacher, and write down notes at the same time. The students read the slides at their pace, whereas the teacher reads the same at his/ her pace. If the student is slow than teacher, he/she will not be able to read the entire slide before it is changed. Such a student will not be able to write down notes. **Secondly**, some of the slides are very heavy. To read them

becomes very difficult for the students. **Thirdly**, some of the teachers simply start reading their slides word by word without any discussion. **Fourthly**, some of the slides are badly prepared which do not make any sense. **Fifthly**, some of the teachers prepare the slides by using small fonts which are not legible from distance and put lot of strain on eyes. Last but not the least, it becomes very cumbersome for the students to read all the slides throughout the lecture.

It is suggested that while making PPT, teachers should keep in mind that the slides are not heavy and only pointers are there; font size is big enough for the students to read; colour of slides are soothing to the eyes; design of templates should be such on which words can be read clearly; slides are updated every time, if required, by the teacher before he/she goes to the class; slides may be shared with students in pdf format, so that they do not write pointers in their notebook and concentrate fully on the lecture. Teachers should not become so habitual of teaching through PPT that they fail to teach without PPT. Some speakers were seen lost when their PPT did not work. The format of the sample lecture stated above may be followed by a teacher even though he/she teaches through PPT.

It may be noted that teachers may also adopt blended mode, wherever necessary. While making PPT slides, teachers can also use blackboard or whiteboard in between. A part of the lecture may be delivered through chalk and talk mode and the other may be through PPT slides. Many a times, concepts may better be explained on blackboard or white board by making tables or charts, rather than through PPT. Skills are required where charts, tables, etc. are to be inserted in the PPT. All the teachers are not capable of making such PPT. It is also realized that PPT mode of teaching is more popular among young teachers who are computer savvy.

**C. Preparation of Lecture for Case Method of Teaching**

In some places such as University of Delhi, law is taught through case method of teaching. For every paper, case material is prepared which primarily consists of leading judgements of Supreme Court and various High Courts of India. The case materials may also have judgements of foreign jurisdictions, International Court of Justice and International Tribunals. In some of the papers like Jurisprudence, some chapters from the books and articles form part of the case materials. The case materials so prepared are meant strictly for private circulations only. These case materials are revised every year by all teachers teaching that particular subject.

In the case method of teaching, focus is made on the provisions of Bare Acts and case materials. In such a system, the teachers and students are required to have Bare Acts and Case materials with them in the classrooms. The lecture prepared for chalk and talk method of teaching may be adapted to teach the students.

Unlike books and commentaries, Bare Acts, treaties, and the court's judgments are treated as the primary sources. Case studies enable students to find out *obiter dicta* and *ratio decidendi*. The students get to know what is binding part and what are the observations of the court in the judgement. It is, therefore, essential that while teaching a case, the teacher should discuss the facts, arguments and defence of the parties, major law points and judgement of the court. Sometimes, teachers tell the gist of the case only. The students also feel comfortable with the gist of cases. But this is not the right way of teaching by case method. The entire purpose of teaching gets defeated if only gist of the cases are told rather than discussing the case at length.

The benefits of discussing a case in the class room are that the students become aware about the grounds taken by both the parties; the mistakes, if any, committed by one of the parties during arguments; the scope of improvement of arguments; the correctness or incorrectness of the judgement of the lower courts; and finally, whether the judgement lays down sound proposition of law. In this system, teachers and students study many other cases which had been relied upon by the parties and discussed in the judgements. The case method of teaching is very useful to provide some practical inputs to students in the class rooms which is otherwise not possible if the students are not being taught leading case laws in details. The students therefore learn the technique of how to read, analyze and interpret a judgement.

The Case Method of teaching is very relevant in common law countries for the reason that precedents are followed and every teacher and student is expected to know the latest judgements of the courts. This method is extremely important in subjects where statutory law is not there or if it is there, it may not be covering the entire aspects of a subject matter, like law of torts, law of breach of confidence, etc.

The coverage of topics in this method of teaching, however, is less in comparison to other methods. The reason is that lot of time is devoted to discuss cases in the class rooms. A teacher is required to be updated in the areas he/she is interested as a teacher. After having discussed about how to prepare a lecture, it is pertinent to discuss about the delivery of lecture.

**III. How to Deliver a Lecture?**

Delivery of a lecture in an effective manner is extremely important to keep the students attentive throughout the lecture. Normally, a lecture is of one-hour duration. The students may have back-to-back classes for most of the times. It really becomes

a challenge particularly for the teachers who have last classes to keep the students attentive. It is, therefore, desired that a lecture should not only be prepared in the structured way as already discussed, but also be delivered in the effective manner. Certain things should be kept in mind while delivering a lecture. In this section, I will also discuss dos and don'ts for teachers in the classroom.

**A. Entering Class Room with a Smile**

A teacher must enter the class room with a smile and wish the students. This brings lot of positivity in the class. Never enter the class room with aggressive or disappointed face. A teacher may have some issues at family front, or at the institutional level or may not be happy with students for some reasons. Come what may, a teacher is expected to leave the aggression or disappointment outside the class room, otherwise while teaching he/she may become harsh with students for minor things, and there may be unwarranted consequences for that. If one starts with a smile, the students who were otherwise not in good mood may also respond positively.

**B. Maintaining Eye Contact with Students**

Normally, it is seen that teachers do not maintain eye contact with every student, rather their attention is confined to a few students only who respond to them through their gestures. Some students grab the attention of their teachers by responding to the questions asked by them or by raising questions or by responding by gestures. The focus of teachers in such cases is confined to these students only. This ultimately results in unwarranted activities happening in the class rooms among other students. The students start chatting among themselves; some become busy in their mobile phones; others start creating nuisance. This results in indiscipline. Therefore, eye contact with

all students is essential to keep them engaged. A teacher should not focus his/her attention on few students only who are active in the classroom and participate in the interaction. An eye contact is must to involve the entire class in the discussion and also to maintain discipline.

**C. Maintaining Pitch in the Classroom**

In addition to maintain an eye contact, it is also important that a teacher must maintain his/her pitch in the classroom. Speaking slowly would mean that students sitting on the last benches would not be able to hear the lecture. They will either complain about it or will not take any interest in the lecture. This will give room to those students to do unwarranted activities which may ultimately result in indiscipline. At the same time, maintaining high pitch results in nuisance and also irritates students particularly those sitting on the front benches. It also brings adverse impact on the teacher's body in the long run as it may damage his/her vocal cords. It is, therefore, extremely important to maintain a balanced pitched. The teacher must maintain his/her pitch to the extent that the voice reaches the last benches.

**D. Class Management**

Teachers must have full control on their language and behaviour in the classroom. They must avoid loose talking and ensure that they do not offend the students by their language or behaviour in any case whatsoever. Class management is art. Sometimes there are students who are either indisciplined or having irritating tendency. Teachers must behave maturely to handle such students rather than being very harsh to them. These students should be dealt with by love to the extent possible; sometimes should be scolded to a point; and sometimes should be ignored. Sometimes, the teachers have the tendency of

throwing pieces of chalks on the students who are non-attentive or causing some indiscipline in the class. This is not a good practice at all and must be avoided. A direct head on collision with them may aggravate situation rather than solving it. The Heads, Deans, Principals or Teacher In-charges may take cognizance of complaints by the teacher for a few times only. At the end of the day, teacher himself/herself will have to solve the issue. Therefore, experience, maturity and skills must be used to manage the class in the most appropriate manner. Teachers may also make the classes interactive and involve such students to mitigate their nuisance value.

**E. Answering Questions of the Students**

In my teaching career, I have found some teachers avoiding questions of the students. Shockingly, I also found teachers getting irritated if students raise any question. There are some who will give any answer whether right or wrong with a lot of confidence to make the student believe that the answer is correct. This is absolutely an unacceptable behaviour of a teacher. Normally, this is done, when a teacher is not well read or well prepared on the day of lecture. Teacher may also be habitual of doing so. Teachers must remember that this is their moral duty to answer the questions of students. Teachers must encourage students to ask questions and not to snub or humiliate them. If a teacher does not know the answer, he/she can politely tell them that the question will be answered in the next class. In the next class, the teacher must answer the question. It should always be remembered that a teacher also learns from students' queries.

**F. Avoid Using the Same Word Repeatedly**

Some of the teachers have the habit of using a particular word repeatedly during their conversation with others. For example, the words like "you see", "understand", "ok", etc. are

used very frequently by some of the teachers. This becomes a habit and they do not even realize about this. This habit is required to be changed. The moment somebody points out at this habit, they must immediately change it. I have seen some students counting the number of such words in the class when a teacher is delivering a lecture. The focus of students gets changed when they indulge in such a practice. A peer review of the lecture is always better, as a colleague can give better feedback.

**G. Showing Commitments for Inclusive Education**

It is extremely important that teachers must be mindful of the special needs of PwD and other socially disadvantaged students in their classes. Most of these students take admission in central and state universities. It is found that most of them prefer to study their courses in Hindi or vernacular languages. At University of Delhi, LL.B. classes are taught in English, however, students have the choice to write the examinations in Hindi. Many a times, the PwD students face problems in understanding the lecture or getting their concepts clear. The teachers ordinarily do not pay any attention towards them. They simply deliver their lectures and go. It has been realized that most of the teachers do not even take the trouble of knowing the fact whether these students could follow their lectures or not. Sometimes, the students ask the teachers to explain the things in Hindi or the vernacular language. However, most of the time, such students do not speak anything and keep quiet. This is extremely unfortunate. Teachers must explain the concepts using Hindi or vernacular languages as the case may be. They should ask such students the difficulties, if any, faced by them in the class and help them to overcome the same.

The United Nations Convention on the Rights of Persons with Disabilities, 2006 mandates Member States to provide

inclusive education for PwD students.[2] Chapter III of the Rights of Persons with Disabilities Act, 2016 also provides for the inclusive education. Not only that, the new National Education Policy 2020 also reaffirms the State commitment of inclusive education. "Inclusive education" means "a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities".[3] Despite being an obligation for all educational institutions to provide inclusive education, the teachers fail to pay attention to the special needs of PwD students. The teachers are duty bound to ensure that their teaching is as meaningful to these students as it is to normal student who are without disability. For this purpose, the teachers must pay attention towards them, adapt their teaching method to suit their requirement, encourage them to participate in the classrooms. The responsibility of teachers increases manifold in case of visually impaired students.

It also becomes the duty of teachers to provide reading materials to visually impaired persons in a format required by such students. The teachers cannot provide materials in all formats, such as braille, daisy and others, but at the same time, they can provide them materials in PDF formats, as some of the students use PDF with the help of screen to read software which is specially designed for them. In addition to this, teachers should also provide them audio recorded lectures which they can listen using their mobile phones. Teachers should also assist them in getting accessible format copies from the libraries. These students will have to go to their college/centre/department libraries several times as well as the central library of the university to get the materials converted in the accessible format copies. Teachers are the better persons to act as facilitators for them.

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[2] The United Nations Convention on the Rights of Persons with Disabilities, 2006, art. 24.

[3] The Rights of Persons with Disabilities Act, 2016, s. 2(m)

The teachers must give them extra time, if so requested by them. These students are sincere but they fail to do good in the examinations. Teachers will be failing in their duties to provide them inclusive education if their problems are not taken care of. Therefore, teachers must play a pro-active role for them rather than ignoring their needs.

**IV. Conclusion**

To sum up, it can be stated that reading lot of books and articles may make a person knowledgeable but not a good teacher. For becoming a good teacher, one has to pay attention to the way he/she prepares the lecture and delivers it in the class room. I have come across many teachers who were very intelligent and excellent researchers, but were not recognized as popular teachers. Education is to be imparted in a systematise and structured manner taking into account the grasping power of students. A good teacher has to come down to the level of students to make his lecture meaningful. Simple language should be used by teachers in the class rooms as students come from different backgrounds. Using complex language and showing vast knowledge to students do not serve any purpose.

A teacher is expected to carry Bare Act, cases or other reading materials to the class rooms. Going empty handed in the class means that the teacher is not serious in delivering the lecture and he/she is going to fulfil the formality of delivering lecture. There may be some exceptions to this. We should not forget that we have human memory and not computer memory. The human memory tends to forget things, which is not the case with computer memory. If a teacher goes to the class without preparing the lecture, it is cent percent sure that he/she will not be able to do justice to students at all. It is normally seen that teachers have to be involved in many administrative works of the institution. It is however, suggested that even if a teacher does not

get adequate time to prepare a lecture due to some administrative assignment or otherwise, he/she must have a look at the reading materials before going to the class.

With small efforts, and by taking into consideration the aforesaid suggestions, a lecture can be made more meaningful. A good teacher is one who teaches by coming down to the level of students and ensuring that his/her students understand what is being taught to them. A good teacher should involve students in the class room discussion and encourage them to raise their queries. A teacher must walk an extra mile for the students who deserve his/her attention more than others. One should not forget that teaching is a very difficult and skilful job and not an easy one as the people normally think. Teachers have to update themselves and get ready to answer all the queries raised by students. Teachers must always remember that they are discharging an extremely important duty of shaping the lives of their students.

## Chapter - 4

# RESEARCHING AND TEACHING SPACE LAW: PEDAGOGICAL METHODOLOGY, APPROACHES AND CRITICAL THEORY

*Dilip Ukey**
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## I. Introduction

The launch of Sputnik made the dream of space exploration into reality.[1] Four years later, Soviet cosmonaut Yuri Gagarin

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[1] *Sputnik and the Dawn of the Space Age*, NASA, (Dec. 12, 2020), https://history.nasa.gov/sputnik.html; Michael N. Schmitt, *Space law*, *in* TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS 270–283 (2 ed. 2017); Space Law: United Nations, 26 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 681–681 (1977); F. B. Schick, *Space Law and Space Politics*, 10 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 681–706 (1961); Malcolm N. Shaw, *Air law and space law*, *in* INTERNATIONAL LAW 463–489 (5 ed. 2003); J. G. Porter, *III—The Voyage of Sputnik*, 11 JOURNAL OF NAVIGATION 177–179 (1958); Nicholas J. Cull, *In the Shadow of Sputnik: The Second Eisenhower Administration, 1957–61*, *in* THE COLD WAR AND THE UNITED STATES INFORMATION AGENCY: AMERICAN PROPAGANDA AND PUBLIC DIPLOMACY, 1945–1989 134–188 (2008); Jeanne Guillemin, *C.P. Snow, Sputnik and the Cold War*, 27 EUROPEAN REVIEW 80–86 (2019); S. N. Vernov & A. E. Chudakov, *5. Study of Cosmic Rays by Rockets and Sputniks in the U.S.S.R.*, 10 TRANSACTIONS OF THE INTERNATIONAL ASTRONOMICAL UNION 710–712 (1960); Catherine R. Osborne, *From Sputnik to Spaceship Earth: American Catholics and the Space Age*, 25 RELIGION AND AMERICAN CULTURE: A JOURNAL OF INTERPRETATION 218–263 (2015); James Gilbert, *Robert A. Divine. The Sputnik Challenge. New York: Oxford University Press, 1993. Pp. xviii, 245. $25.00.*, 34 HISTORY OF EDUCATION QUARTERLY 391–393 (1994).

became the first human to see Earth from space.[2] These socio-tech developments also influenced geopolitics economics and social changes in the global order. Space law, like other branches of public international law, has its roots in the need to establish an international legal order to govern an increasingly organized international community, primarily the community of states.[3] A feature of every successful field of study is the capacity of its scholarship to deconstruct its core ideas, debates, controversies, methodologies, developments, trends and significance so as to make it accessible to a broader community. International law has been successful in this aspect. After World War II, the rise in scholarship in disciplines associated with international law has been influenced by globalization. From a methodological spectrum, progressive codification of law due to the rise of the United Nations system has also influenced the traditional normative principles of international legal studies. In this regard, the future of international law will require increased attention to state behaviour. As Tom Ginsburg and Gregory Shaffer argues this strategy applied to studying both the production of international law and its implementation, as well as to the dynamic interaction between these two processes. They argue:

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[2] *Soviet cosmonaut Yuri Gagarin becomes the first man in space*, HISTORY, (Dec. 12, 2021), https://www.history.com/this-day-in-history/first-man-in-space#.

[3] Jankowitsch, Peter, *The background and history of space law*, in VON DER DUNK, FRANS (ED), HANDBOOK OF SPACE LAW 1 (2015); Space Law: United Nations, 26 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 681–681 (1977); William Hooker, *Histories of space*, *in* CARL SCHMITT'S INTERNATIONAL THOUGHT: ORDER AND ORIENTATION 69–101 (2009); P. Malanczuk, *Space law as a branch of international law*, 25 NETHERLANDS YEARBOOK OF INTERNATIONAL LAW 143–180 (1994); David M. Rabban, *Taming the Past: Essays on Law in History and History in Law*, 36 LAW AND HISTORY REVIEW 421–428 (2018); Annabel Brett, Megan Donaldson & Martti Koskenniemi, *History, Politics, Law*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 1–16 (Annabel Brett, Megan Donaldson, & Martti Koskenniemi eds., 2021); E. H. F., *Institute of Air and Space Law*, 56 AMERICAN JOURNAL OF INTERNATIONAL LAW 161–161 (1962).

> "Understanding the interaction of international and domestic law, politics, and institutions also requires the continued use of diverse mixed-method research strategies. The combined effort of relaxing the assumption of the state as a unitary actor, and the introduction of more complex research strategies, requires a definitive break from the realist tradition of international relations. International empirical research scholarship must remain a distinct interdisciplinary field that takes both law and power seriously."[4]

International law was developed with the aim to solve common challenges.[5] In the present era, these common challenges have also evolved with the evolution of society. For example, the rise of technology and artificial intelligence is changing the way we look at the law. Modern international law is playing a significant role in equipping the state to deal with these modern challenges. Space law is one such domain that is growing and developing with changing technologies. 'Space law' as a branch of international law provides for a legal system that governs outer space and space activities, is a new area of law.

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[4] Tom Ginsburg and Gregory Shaffer, *How Does Inter National Law Work?*, in PETER CANE AND HERBERT M. KRITZER, THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 756 (2010)

[5] See AKBAR RASULOV, *International Law and the Poststructuralist Challenge*, 19 LEIDEN JOURNAL OF INTERNATIONAL LAW 799–827 (2006); Michelle Bachelet Jeria, *The Challenges to International Law in the 21st Century*, 110 PROCEEDINGS OF THE ASIL ANNUAL MEETING 3–11 (2016); Dana Burchardt, *The Functions of Law and their Challenges: The Differentiated Functionality of International Law*, 20 GERMAN LAW JOURNAL 409–429 (2019); Christopher Greenwood, *The Practice of International Law: Threats, Challenges, and Opportunities*, 112 PROCEEDINGS OF THE ASIL ANNUAL MEETING 161–167 (2018); Isabel Feichtner, *The stability/flexibility challenge in public international law*, *in* THE LAW AND POLITICS OF WTO WAIVERS: STABILITY AND FLEXIBILITY IN PUBLIC INTERNATIONAL LAW 6–19 (2011); Stephen M. Schwebel, *The United Nations and the Challenge of a Changing International Law*, *in* JUSTICE IN INTERNATIONAL LAW: SELECTED WRITINGS 514–520 (1994).

However, this young law is expanding and is transformative in nature. It is also because the number and variety of actors are expanding beyond state. Space law now governs international organizations and private entities that are involved in space activities.[6] Studies in Space Law notes "as a consequence, the traditional field of research of space law is widening so as to include or interfere with such other fields as telecommunications law, intellectual property rights, trade and commercial law, EC law, transport law and so on."[7]

World history also shows that space law was driven as a new branch of international law primarily because of geopolitical considerations, "namely the opening, in outer space, of a new field of competition and possibly confrontation of the two superpowers of the day, the United States and the Soviet Union"[8] followed by the necessity to conquer outer space when the world was witnessing the rapid development in nuclear technology. In the 1960s, space technology was its infant stage, nations were financing resources to make powerful launchers, means of communications and intelligence for developing outer space. In this context in 1963, general understandings were reached between then space powers, the United States and the Soviet Union to "ban the deployment of nuclear weapons and other weapons of mass destruction in outer space".[9] It happened before

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[6] HEATHER S. FOGO, *A Legal Mirage: State Responsibility for Non-State Actor Interference with Space Systems*, 55 CANADIAN YEARBOOK OF INTERNATIONAL LAW/ANNUAIRE CANADIEN DE DROIT INTERNATIONAL 180–214 (2018); Raphaël van Steenberghe, *Non-State actors*, *in* AN INSTITUTIONAL APPROACH TO THE RESPONSIBILITY TO PROTECT 33–57 (Gentian Zyberi ed., 2013).

[7] See FRANS G. VON DER DUNK, STUDIES IN SPACE LAW (2021).

[8] Jankowitsch, Peter, *The background and history of space law*, in VON DER DUNK, FRANS (ED), HANDBOOK OF SPACE LAW 2 (2015).

[9] This would be the Treaty Banning Nuclear Weapon Tests in the Atmos- phere, in Outer Space and Under Water (hereafter Partial Test Ban Treaty), Moscow, done 5 August 1963, entered into force 10 October 1963; 480 UNTS 43; TIAS No. 5433; 14 UST 1313; UKTS 1964 No. 3; ATS 1963 No. 26; Spencer R. Weart, *Nuclear fear: a history and an experiment*, *in* SCIENTIFIC CONTROVERSIES: CASE STUDIES IN THE RESOLUTION AND CLOSURE OF

the conclusion of the first major outer space treaty. History makes it clear that space law as an academic discipline cannot be approached without studying state interests, technology, geopolitics and global administrative law.

## II. Demarcating the Disciplines

Researchers who read and study air and space law have a common misunderstanding about the intersection of aviation law and space law. The task for teachers of both the disciplines is to expose that space Law is not an extension of air law.[10] Since the beginning of space law studies, researchers have argued that reaching outer space by rockets would raise a variety of new issues not settled by air law and therefore needing the creation of

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DISPUTES IN SCIENCE AND TECHNOLOGY 529–550 (H. Tristram Engelhardt, Jr. & Arthur L. Caplan eds., 1987); NUCLEAR WEAPONS UNDER INTERNATIONAL LAW, (Gro Nystuen, Stuart Casey-Maslen, & Annie Golden Bersagel eds., 2014); David K. Hecht, *Why we write (nuclear) history*, 50 THE BRITISH JOURNAL FOR THE HISTORY OF SCIENCE 537–543 (2017); Curt Dahlgren, *Neutrality, International Law, and the Nuclear Arms Race*, *in* ON NUCLEAR WEAPONS: DENUCLEARIZATION, DEMILITARIZATION AND DISARMAMENT: SELECTED WRITINGS OF RICHARD FALK 167–182 (Stefan Andersson ed., 2019); Daniel Scott Smith, *The Curious History of Theorizing about the History of the Western Nuclear Family*, 17 SOCIAL SCIENCE HISTORY 325–353 (1993).

[10] *Reexamining Customary Air and Space Law*, *in* REEXAMINING CUSTOMARY INTERNATIONAL LAW 307–374 (Brian D. Lepard ed., 2017); Geoffrey N. Pratt, *The Institute of Air and Space Law, McGill University*, 1 CANADIAN YEARBOOK OF INTERNATIONAL LAW/ANNUAIRE CANADIEN DE DROIT INTERNATIONAL 298–300 (1963); O. J. Lissitzyn, *Annals of Air and Space Law, Vol. I, 1976. Institute of Air and Space Law. (Toronto: The Carswell Co., Ltd.; Paris: Editions A. Pedone, 1977. Pp. viii, 289.)*, 71 AMERICAN JOURNAL OF INTERNATIONAL LAW 833–834 (1977); Harry H. Almond, *Annals of Air and Space Law. Vol. IV, 1979. By Nicolas Mateesco Matte. (Montreal: Institute and Centre of Air and Space Law, McGill University; Toronto: The Carswell Company Ltd., 1979. Pp. 711. In French and English.)*, 76 AMERICAN JOURNAL OF INTERNATIONAL LAW 707–707 (1982); I. H. Ph. Diederiks-Verschoor, *The freedom of the air, edited by Edward McWhinney, Professor of Law, Director, Institute of Air and Space Law, McGill University, Montreal, and Martin A. Bradley, A. W. Sijthoff/Leyden, 1968, 259 pag.*, 17 NEDERLANDS TIJDSCHRIFT VOOR INTERNATIONAAL RECHT 81–82 (1970).

a new body of law.[11] However, in theoretical understanding, the origins of air law and the origins of space law have one thing in common – technology. Technological factors have played a large part in the development of air and space law. As Isabella Diederiks-Verschoor writes in her book *Introduction to Space Law*, "it was the Wright brothers' engine-powered flight in 1903 that eventually led to the first series of international conferences and agreements on rules and regulations for air traffic, in particular the famous Paris Convention of 1919, preceding the later Chicago Convention of 1944."[12] Similarly, the launch of Sputnik also called the academic world to deliberate on the need to develop the legal principles to regulate activities in outer space. The signing and entry into force of the 'Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies' was also the beginning of the creation of a new branch of public international law that we study as the law of outer space.

Air and space law should be approached and studied as independent disciplines. The difference between the laws governing air space and outer space is that the air space above a state's territory is governed by the exclusive sovereignty of the respective State. The vertical limit of sovereignty is extended to outer space. Unlike air law, outer space is not subject to the exclusive sovereignty of the state.[13] Both the regimes were

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[11] See V. MANDL, DAS WELTRAUM-RECHT: EIN PROBLEM DER RAUMFAHRT 48 (1932), V. Kopal & M. Hofmann, *Vladimír Mandl (20.3.1899– 8.1.1941)*, in PIONEERS OF SPACE LAW 57 (Ed. S. Hobe) (2013; N. JASENTULIYANA, SPACE LAW: DEVELOPMENT AND SCOPE 18-19 (1992).

[12] See I.H.P. Diederiks-Verschoor & V. Kopal, Introduction to Space Law (3rd edn., 2008), 2. See also Convention Relating to the Regulation of Aerial Navigation (Paris Con- vention), Paris, done 13 October 1919, entered into force 11 July 1922; 11 LNTS 173; UKTS 1922 No. 2; ATS 1922 No. 6; Convention on International Civil Aviation (Chicago Convention), Chicago, done 7 December 1944, entered into force 4 April 1947; 15 UNTS 295; TIAS 1591; 61 Stat. 1180; Cmd. 6614; UKTS 1953 No. 8; ATS 1957 No. 5; ICAO Doc. 7300.

[13] *The Delimitation between Airspace and Outer Space*, SPACE LEGAL ISSUES, https://www.spacelegalissues.com/the-delimitation-between-airspace-and-outer-

developed when the technology for aerospace movements was not formalized together. Moreover, there is significant inconsistency and there is no unification or integration between the regimes of air and space law. The fundamental principles of air law and space law are also different.

Air law governs the working of airspace and aircraft.[14] In terms of sovereignty, States enjoy "complete and exclusive sovereignty over their territorial air space". The Convention on International Civil Aviation states that "Every state has complete

space/: "In the legal literature, there exist many good ideas on delimitation, based on many different concerns such as Airspace and Outer Space traffic control, insurance, commercial development (in particular space tourism and hypersonic transportation), pure science, and a host of other notions. Any one of these concerns may be a firm basis on which a regime of delimitation can be founded (with the remaining concerns adjusting their regulations and practices to whatever line is determined). But, as yet, there is no clear state consensus as to a line or the primary foundation upon which any such delimitation should be based." Blewett Lee, *Sovereignty of the Air*, 7 AMERICAN JOURNAL OF INTERNATIONAL LAW 470–496 (1913); J. G. Sauveplanne, *Freedom and Sovereignty in Air- and Outer Space*, 12 NEDERLANDS TIJDSCHRIFT VOOR INTERNATIONAAL RECHT 228–250 (1965); L. J. Bouchez, *The Concept of Effectiveness as applied to Territorial Sovereignty over Sea-Areas, Air Space and Outer Space*, 9 NEDERLANDS TIJDSCHRIFT VOOR INTERNATIONAAL RECHT 151–182 (1962); Arthur K. Kuhn, *Air Sovereignty. By Dr. J. F. Lycklama à Nijeholt. The Hague: Martinus Nijhoff. 1910. pp. viii, 86.*, 5 AMERICAN JOURNAL OF INTERNATIONAL LAW 555–557 (1911); F. G. S., *Air Sovereignty. By Dr. J. F. Lycklama à Nijeholt. (The Hague : Nijhoff; London : Luzac, 1910. pp. 86. 2s. 6d. net.)*, 15 AERONAUTICAL JOURNAL (LONDON, ENGLAND : 1897) 30–31 (1911); K. J. Holsti, *Sovereignty*, *in* TAMING THE SOVEREIGNS: INSTITUTIONAL CHANGE IN INTERNATIONAL POLITICS 112–142 (2004).

[14] Manley O. Hudson, *Aviation and International Law*, 24 AMERICAN JOURNAL OF INTERNATIONAL LAW 228–240 (1930); Brian F. Havel & Gabriel S. Sanchez, *What is International Aviation Law?*, *in* THE PRINCIPLES AND PRACTICE OF INTERNATIONAL AVIATION LAW 1–27 (2014); Sofia Michaelides-Mateou, *Customary International Law in Aviation: A Hundred Years of Travel through the Competing Norms of Sovereignty and Freedom of Overflight*, *in* REEXAMINING CUSTOMARY INTERNATIONAL LAW 309–345 (Brian D. Lepard ed., 2017); Brian F. Havel & Gabriel S. Sanchez, *The Foundations of Public International Aviation Law*, *in* THE PRINCIPLES AND PRACTICE OF INTERNATIONAL AVIATION LAW 28–68 (2014); BRIAN F. HAVEL & GABRIEL S. SANCHEZ, THE PRINCIPLES AND PRACTICE OF INTERNATIONAL AVIATION LAW (2014).

and exclusive sovereignty in the airspace above its territory".[15] It also states that "Territory includes the land areas and territorial waters adjacent thereto". The Chicago Convention and various other international treaties impose "liability on the airline, or the aircraft operator" and require States to "certify and register aircraft, and environmental standards, regulate safety, navigation, and security, regulate noise and emissions."[16] Article 3 of the Chicago Convention notes "No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with terms thereof".[17] Article 6 declares that "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization".[18] Article 12 states that "Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State".[19]

On the other hand, space law governs outer space and space objects. In outer space, state has no sovereignty over outer

[15] International Civil Aviation Organization (ICAO), Convention on Civil Aviation ("Chicago Convention"), 7 December 1944, (1994) 15 U.N.T.S. 295

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*

space.[20] Various treaties that govern outer space deal with State's liability and responsibility and aims to create an international registration regime. Article II of the Outer Space Treaty resonates with this idea and it affirms that "Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means". Airspace and outer space are not defined in the relevant treaties. One such debate revolves around delimitation between air and space law. Two primary schools of thought deal with delimitation – 'spatialism' and 'functionalism'. spatialism argues "for a fixed line, at a set altitude, for the division of airspace and outer space and under a strict spatialist analysis, if a craft, regardless of its nature and capabilities, is below the line, it is in airspace; when it is above the line, it is in outer space." On the other hand, functionalism argues "in the nature of the craft in question and if it serves outer space functions, outer space law applies wherever it is operating; if it is an aircraft, airspace law applies to its flight." The five UN-sponsored outer space treaties provide the legal foundation regulating human activities in outer space.[21]

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[20] Paul B. Larsen, *Recent Changes in Space Law's Concept of Sovereignty*, 88 PROCEEDINGS OF THE ASIL ANNUAL MEETING 264–268 (1994); Jacek Machowski, *Selected Problems of National Sovereignty with Reference to the Law of Outer Space*, 55 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW AT ITS ANNUAL MEETING 169–174 (1961); RAYMOND DUVALL & JONATHAN HAVERCROFT, *Taking sovereignty out of this world: space weapons and empire of the future*, 34 REVIEW OF INTERNATIONAL STUDIES 755–775 (2008); Daniel Philpott, *Usurping the Sovereignty of Sovereignty?*, 53 WORLD POLITICS 297–324 (2001).

[21] The treaties commonly referred to as the "five United Nations treaties on outer space" are:

i. The "Outer Space Treaty"
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Adopted by the General Assembly in its resolution 2222 (XXI), opened for signature on 27 January 1967, entered into force on 10 October 1967

ii. The "Rescue Agreement"
Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space Adopted by the General Assembly in its resolution

## III. Approaching the discipline: Deconstruction and Construction

### A. Overt Militarization of Space: Studying Hard power and Soft power

> "[W]e must not allow this century, so plagued with war and suffering, to pass on its legacy, when the technology at our disposal will be even more awesome. We cannot view the expanse of space as another battleground for our Earthly conflicts." - Kofi Annan[22]

Around 2500 years ago, Sun Tzu wrote the classic work *The Art of War,* in which he writes on dealing with 'Terrain' in his Tenth Chapter. Sun Tzu recommended that "if possible, one should occupy the high ground." [23] Occupying and controlling outer space provides a new frontier to use this principle. M. Bourbonniere writes "Unimpeded access to outer space and unrestricted freedom to use outer space and celestial bodies provides a

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2345 (XXII), opened for signature on 22 April 1968, entered into force on 3 December 1968

iii. The "Liability Convention"
Convention on International Liability for Damage Caused by Space Objects. Adopted by the General Assembly in its resolution 2777 (XXVI), opened for signature on 29 March 1972, entered into force on 1 September 1972

iv. The "Registration Convention"
Convention on Registration of Objects Launched into Outer Space. Adopted by the General Assembly in its resolution 3235 (XXIX), opened for signature on 14 January 1975, entered into force on 15 September 1976

v. The "Moon Agreement"
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. Adopted by the General Assembly in its resolution 34/68, opened for signature on 18 December 1979, entered into force on 11 July 1984.

[22] Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III). Vienna, Austria, 19-30 July 1999.

[23] SUN TSU, THE ART OF WAR (Griffith, S. B. (ed.), 1964).

tempting opportunity for a technologically advanced country to seize control of outer space and deny freedom of use to other countries that stand in its way."[24] Outer space provides has the potential to change the dynamics of economic growth by developing science and technology. In terms of warfare, space is now an important domain for militarization. Usage of space by the military has been a key feature of space activities,[25] for example, satellites utilized by militaries have widely proliferated among space-faring states.[26] F. Lyall & P.B. Larsen argues "Satellites not only play a crucial role in the context of military operations but also are crucial components of the national security strategies of the most technologically advanced states."[27]

In 2018, the United States issued its first National Space Strategy. It recognized that "its adversaries had turned space into a warfighting domain."[28] Over the past few years, many developing countries are pursuing military uses of space. For example, India

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[24] M. Bourbonniere, *Legal Regime for Keeping Outer Space Free of Armaments* (2002) 27 AASL 109 (Bourbonniere I). See also his, Law of Armed Conflict (LOAC) and the Neutralization of Satellites or Jus in Bello Satellitis (2004) 9 J. CONFLICT AND SECURITY L. 43 (Bourbonniere II) [Lyall/Larsen, 515–41], *National-Security Law in Outer Space: The Interface of Exploration and Security* (2005) 70 J. AIR L. AND COM. 3–62, and *The Ambit of the Law of Neutrality and Space Security* (2007) 36 ISRAEL Y.B. H. RTS. 205 29; A. Rosas, *The Militarization of Space and International Law* (1983) 20 J. PEACE RESEARCH 357–64; L. Tate, *The Status of the Outer Space Treaty during "War"* and *Those Measures Short of War* (2006) 32 J. SP. L. 177–202; W. von Kreis, '*Military Space Activities – Legally Unconstrained? L'Adaption du Droit de l'Espace ses Nouveau Défis – Liber Amicorum, Mélanges en l'honneur de Simone Courtieux* 105-18(2007).

[25] K.U. SCHROGL & J. NEUMANN, ARTICLE IV, COLOGNE COMMENTARY ON SPACE LAW 71 (Eds. S. Hobe, B. Schmidt-Tedd & K.U. Schrogl) Vol. I (2009).

[26] F. LYALL & P.B. LARSEN, SPACE LAW – A TREATISE 499-532 (2009).

[27] Cf. E.S. Waldrop, *Integration of Military and Civilian Space Assets: Legal and National Security Implications*, 55 AIR FORCE LAW REVIEW (2004), 157–231; W. Rathgeber & N.L. Remuss, Space Security: A Formative Role and a Principled Identity for Europe, ESPI Report, January 2009.

[28] The White House, "Fact Sheets: President Donald J. Trump is Unveiling an America First National Space Strategy", March 23, 2018.

conducted an anti-satellite weapon test in March 2019.[29] The Chinese PLA established the Strategic Support Force in 2015, which handles the fields of space, cyber, and the electromagnetic spectrum.[30] Russia followed a similar strategy.[31] France established the Space Command in September 2019,[32] and the USA formed the Space Force in 2019.[33] The study of space law cannot be complete without analysing two important themes: the use of outer space for overt-militarization and geopolitical changes. There is a need to conduct more nuanced research in interlinking soft power and hard power.

**B. Reading Domestic Policies**

Dr. Edythe Weeks, in her work titled *Outer Space Development, International Relations, and Space Law: A Method of Elucidating Seeds* marks the "shift away from the Realist interactions observed previously due to security concerns to a climate in which space law development on the international level has stalled and domestic space law development is at the forefront. This reflects the global pattern at the time of a shift towards privatization and globalization as the Soviet Union and

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[29] Ashley J. Tellis, *India's ASAT Test: An Incomplete Success*, CARNEGIE, (Dec. 12, 2021), https://carnegieendowment.org/2019/04/15/india-s-asat-test-incomplete-success-pub-78884

[30] Kevin L. Pollpeter, Michael S. Chase, Eric Heginbotham, *The Creation of the PLA Strategic Support Force and Its Implications for Chinese Military Space Operations*, RAND, (Dec. 12, 2021), https://www.rand.org/pubs/research_reports/RR2058.html#.

[31] *Russia Re-Establishes Independent Space Forces*, ARMS CONTROL ASSOCIATION, (Dec. 12, 2021), https://www.armscontrol.org/act/2001-07/russia-re-establishes-independent-space-forces

[32] *France to create new space defence command in September*, BBC NEWS, (Dec. 12, 2020), https Valerie Insinna, *Trump officially organizes the Space Force under the Air Force for now*, DEFENSE NEWS, (Dec. 12, 2020), https://www.defensenews.com/space/2019/02/19/trump-signs-off-on-organizing-the-space-force-under-the-air-forcefor-now/://www.bbc.com/news/world-europe-48976271

[33] Valerie Insinna, *Trump officially organizes the Space Force under the Air Force ... for now*, DEFENSE NEWS, (Dec. 12, 2021), https://www.defensenews.com/space/2019/02/19/trump-signs-off-on-organizing-the-space-force-under-the-air-forcefor-now/

its Communist influences began to weaken."[34] This also resulted in states restructuring their domestic policies on commercial space activities. Michael Beaver writes "It is important to note that this time of domestic policy creation did not coincide with the development of corresponding international law on the issue of commercialization, which leads to differing views of the appropriate actions for private entities to take in outer space."[35]

It is also important to note that after Cold War, the progress and development of existing international laws governing outer space activities have been minimal.[36] However, various countries have adopted domestic policies to further their economic agenda.[37] The United States for enhancing their commercial space

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[34] EDYTHE WEEKS, OUTER SPACE DEVELOPMENT, INTERNATIONAL RELATIONS AND SPACE LAW: A METHOD FOR ELUCIDATING SEED (2012)

[35] Michael Beaver, Current Space Law Limitations and Its Implications on Outer Space Conflicts, E-International Relations, URL: https://www.e-ir.info/2015/06/16/current-space-law-limitations-and-its-implications-on-outer-space-conflicts/

[36] See also New U.S. National Space Policy Emphasizes Cooperation, Signals U.S. Willingness to Consider Verifiable Space Arms Control Measures, 104 AMERICAN JOURNAL OF INTERNATIONAL LAW 666–668 (2010).

[37] John R. Hibbing & Elizabeth Theiss-Morse, *Policy Space and American Politics*, *in* STEALTH DEMOCRACY: AMERICANS' BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK 15–35 (2002); David H. Guston, *Introduction: Making Space for Science Policy*, *in* BETWEEN POLITICS AND SCIENCE: ASSURING THE INTEGRITY AND PRODUCTIVITY OF RESEACH 1–13 (2000); New Statement of U.S. Space Policy, 101 AMERICAN JOURNAL OF INTERNATIONAL LAW 204–207 (2007); Howard J. Taubenfeld, *Outer Space—Past Politics and Future Policy*, 55 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW AT ITS ANNUAL MEETING 176–180 (1961); Yun Zhao, *Legal and Policy Aspects of Space Cooperation in the BRICS Region: Inventory, Challenges and Opportunities*, *in* THE BRICS-LAWYERS' GUIDE TO GLOBAL COOPERATION 287–308 (Rostam J. Neuwirth, Alexandr Svetlicinii, & Denis De Castro Halis eds., 2017); N. March Hunnings, *Outer Space*, 21 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 576–578 (1972); Francis Vallat, *The Outer Space Treaties*, 73 THE AERONAUTICAL JOURNAL (1968) 751–758 (1969); Edward Miles, *Transnationalism in Space: Inner and Outer*, 25 INTERNATIONAL ORGANIZATION 602–625 (1971); Klaus Knorr, *On the International Implications of Outer Space*, 12 WORLD POLITICS 564–584 (1960); Jan Klabbers, *The Seas, the Air, and Outer Space*, *in* INTERNATIONAL LAW 255–277 (2 ed. 2017); Bruce A. Hurwitz, *Israel and the Law of Outer Space*, 22 ISRAEL LAW REVIEW 457–466 (1988); Lincoln P. Bloomfield, *Outer Space and*

activities announced the creation of the New Vision for U.S. Space Exploration Policy. The vision notes "the interest of private industry by calling for the commercialization of space exploration and assuring appropriate property rights are granted to those who seek to develop space resources and infrastructure".[38] Holistic approaches to studying space law should also focus on how the international community respond to space-related legislation and how they shape future outer space activities.

## IV. Interdisciplinarity, Pedagogy and Research Methodology

In international law and interdisciplinarity to study the field has been reflected in the works of M. Koskenniemi.[39] Influential political scientists, like Morgenthau, Kennan and Carr, argued that "state actions were driven by national interests",[40] and Kennan wrote, "international law was too abstract, too inflexible, too hard to adjust to the demands of the

*International Cooperation*, 19 INTERNATIONAL ORGANIZATION 603–621 (1965); Pitman B. Potter, *International Law of Outer Space*, 52 AMERICAN JOURNAL OF INTERNATIONAL LAW 304–306 (1958); Proposals for Treaty on Exploration of Outer Space, 5 INTERNATIONAL LEGAL MATERIALS 1105–1131 (1966).

[38] See also New U.S. National Space Policy Emphasizes Cooperation, Signals U.S. Willingness to Consider Verifiable Space Arms Control Measures, 104 AMERICAN JOURNAL OF INTERNATIONAL LAW 666–668 (2010); United States Creates the U.S. Space Command and the U.S. Space Force to Strengthen Military Capabilities in Space, 114 AMERICAN JOURNAL OF INTERNATIONAL LAW 323–326 (2020).

[39] M. KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960 (2001).

[40] OLIVER JÜTERSONKE, MORGENTHAU, LAW AND REALISM (2010); A. J. H. Murray, *The Moral Politics of Hans Morgenthau*, 58 THE REVIEW OF POLITICS 81–108 (1996); Michael C. Williams, *Hans Morgenthau and the historical construction of Realism*, *in* THE REALIST TRADITION AND THE LIMITS OF INTERNATIONAL RELATIONS 82–127 (2005); H. W. Brands, *Kennan, Morgenthau, and the Sources of Superpower Conduct*, *in* WHAT AMERICA OWES THE WORLD: THE STRUGGLE FOR THE SOUL OF FOREIGN POLICY 144–181 (1998); John Seery, *The Politics of Judgment: Aesthetics, Identity, and Political Theory. By Kennan Ferguson. Lanham, MD: Lexington Books, 1999. 153p.*, 94 AMERICAN POLITICAL SCIENCE REVIEW 705–706 (2000).

unpredictable and the unexpected that mark international affairs".[41] Referring to interdisciplinarity literature of international law and politics interrelations, Rajkovic writes that:

> "A closer scrutiny of these terms reveals how each expresses different visions of the possible degree to which disciplines can be integrated. Where the terms cross-disciplinary and multidisciplinary emphasize disciplinary boundaries, while transdisciplinary is nearer to a total system without any boundaries between disciplines"[42]

Space law as a discipline requires a holistic understanding which would remain incomplete without studying politics, science, technology and more. Reading science becomes important to study space. As Bhatt argues "law and science are the two disciplines that have similar goals, that is to discover truth and science is a search for truth and reality, as the law is."[43] Space exploration too is a search. There is also a need to centralize ecology in this context, considering the already widely discussed impact of outer space activities on the outer space. Space law should be studied through an ecological approach. With the rise of technology, there are also demands to study space through the prisms of intellectual property rights, technology, blockchain, etc. The future of legal research in areas of space will not be independent, it will be an approach to study politics, governance, technology, science and

[41] Outi Korhonen, *Within and Beyond Interdisciplinarity in International Law and Human Rights*, 28(2) EUROPEAN JOURNAL OF INTERNATIONAL LAW 625–648 (2017).

[42] See N. Rajkovic, *The Transformation of International Legal Rule and the Challenge of Interdisciplinarity*, Inaugural address, Tilburg University, 23 (2016).

[43] Dr. S. Bhatt, *Law and Space Research*, in Sandeepa Bhat, SPACE LAW: IN THE ERA OF COMMERCIALISATION 1 (2010).

environment keeping outer space as a point of concern.[44] Outi argues "the disciplinary borders have never drawn an overly Kelsenian line between the pure science of law and other sciences, such as social theory, in the first place."[45]

## V. Conclusion

In the 1960s, security concerns and the geopolitical conflicts between major space powers influenced the development of space law and space politics. However, this also made the system of space governance exclusionary in nature. Developing nations from Africa, Asia and Latin America wanted this new technology to advance global economic and social concerns. There was also a fear that space activities would benefit a small number of advanced, industrialized countries. It was also advocated by U Thant, former Secretary-General of the United Nations when speaking at the 1968 Vienna Conference on the Exploration and Peaceful Uses of Outer Space a Memorandum said "the space age was increasing the gap between the developed and the developing areas at an alarming

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[44] See Manley O. Hudson, *Research in International Law*, 22 AMERICAN JOURNAL OF INTERNATIONAL LAW 151–152 (1928); Hester Swift, *Researching Customary International Law*, 19 LEGAL INFORMATION MANAGEMENT 169–175 (2019); Emilie M. Hafner-Burton, David G. Victor & Yonatan Lupu, *Political Science Research on International Law: The State of the Field*, 106 AMERICAN JOURNAL OF INTERNATIONAL LAW 47–97 (2012); Stanley Hoffmann, *The Study of International Law and the Theory of International Relations*, 57 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW AT ITS ANNUAL MEETING 26–35 (1963); George Grafton Wilson, *The Study and Teaching of International Law*, 10 AMERICAN JOURNAL OF INTERNATIONAL LAW 575–576 (1916); Patrick Dumberry, *Cambridge studies in international and comparative law*, *in* THE FORMATION AND IDENTIFICATION OF RULES OF CUSTOMARY INTERNATIONAL LAW IN INTERNATIONAL INVESTMENT LAW 497–503 (2016); Tyler Dennett, *Governmental Publications for the Study of International Law*, 23 PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW AT ITS ANNUAL MEETING 55–62 (1929).

[45] Outi Korhonen, *Within and Beyond Interdisciplinarity in International Law and Human Rights*, EUROPEAN JOURNAL OF INTERNATIONAL LAW 28(2) 625–648 (2017).

rate".[46] This gap even though has been bridged with countries like India gaining prominence in the space race and space diplomacy. But in terms of academic discourses, there is a long way to go. There is a need to critically deconstruct and evaluate the broad themes of the discipline.[47] Third world approaches to international law (TWAIL) can deconstruct the nature of space law.

The authors argue that the future of space law studies and critical methodologies lies in developing the discipline on the basis of the four thematic areas. **First,** "Theorizing Space Law"- It is a necessity for its critical development using philosophies of realism, institutionalism/rational design, liberalism and constructivism. **Second,** "Deconstructing the making of International Space Law"- the new frontier of space law lies in rethinking the design of international agreements, critically analyzing the role of actors and fora involved in international lawmaking. Critical methodologies also should delve into seeing non-state actors and their influence on the fragmentation/ regime complexity. **Third,** "Deconstructing and Interpreting Space Law"- this requires reading and deconstructing how space as a field of public international law

[46] P. Jankowitsch, *The Role of the United Nations in Outer Space Law Development: Past Achievements and New Challenges*, 26 JOURNAL OF SPACE LAW 105 (1998). See also United Nations Resolution on Peaceful Uses of Outer Space, 3 INTERNATIONAL LEGAL MATERIALS 160–163 (1964); Union of Soviet Socialist Republics–*United States: Agreement on Cooperation in the Exploration and Use of Outer Space for Peaceful Purposes*, 26 INTERNATIONAL LEGAL MATERIALS 622–624 (1987).

[47] See M. J. Peterson, *The use of analogies in developing outer space law*, 51 INTERNATIONAL ORGANIZATION 245–274 (1997); Klaus Knorr, *On the International Implications of Outer Space*, 12 WORLD POLITICS 564–584 (1960); Arnold L. Horelick, *Outer Space and Earthbound Politics*, 13 WORLD POLITICS 323–329 (1961); H. C. L. Merillat, *Law and Developing Countries*, 60 AMERICAN JOURNAL OF INTERNATIONAL LAW 71–79 (1966); James Thuo Gathii, Henry J. Richardson & Karen Knop, *Introduction to Symposium on Theorizing Twail Activism*, 110 AJIL UNBOUND 18–19 (2016).

has been developed by international tribunals, domestic courts and various non-judicial bodies. **Fourth**, "Studying the future of the Global South"- space was also construed as a domain that kept the global south out of its context, primarily because the global south was ineligible to compete due to financial crisis and the nature of outer space activities that demand large economic resources. The future of studies in space law lies in mainstreaming values and opinions of the global south in international lawmaking, including outer space treaties.

## Chapter - 5

# PEDAGOGY OF PUBLIC INTERNATIONAL LAW IN PROFESSIONAL LEGAL EDUCATION

*B. C. Nirmal**

## I. Introduction

Public international law has gradually and significantly become an essential part of legal education in the preceding few decades reflecting its ever-widening sphere and impact. The growing significance is also an indicator[1] of the ways international law and relations have evolved and developed in the late twentieth and twenty first century. The world today is a far cry from what it used to be decades ago, more so because of the advent of globalisation, consequent growth in international trade, globalisation of economy, worldwide human rights movement, and momentous advancements in technology. The rapidity with which imperceptible and epochal changes have engulfed human life has had its own indelible imprint upon the growth of international law and the same has begun to find reflection in ways adopted to teach international law. Besides the traditional bifurcation of international law into public international law and private international law, there are many other areas of study that today remain subsumed under the rubric of international law. It is one

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[1] B. C. Nirmal, *Sovereignty in International Law*, 3 SOOCHEW LAW JOURNAL 1-51(2006); B.C. Nirmal, *Globalisation, International Human Rights Law and Current Economic Crisis* in B. C. Nirmal and Rajnish Kumar Singh (eds.), CONTEMPORARY ISSUES IN INTERNATIONAL LAW,195-226 (Springer, Singapore, 2018).

such important development that has considerably influenced the dynamics of international law, and its teaching.[2]

Be that as it may, there remains a lack of academic efforts aimed at analysing the ways and means of teaching international law in India. It will therefore be a fruitful exercise to delve into the teaching of international law both from the perspectives of how it is taught and it should be taught. The ensuing deliberation touches upon some of the key issues of importance as regards teaching international law in Indian law schools and department. The spotlight of the paper remains firmly fixed upon some of core aspects of international law, such as, understanding the nature of international law, tracing the evolution of international law, advent and influence of globalisation, international trade regime and so on.

## II. International Law: Nature and Significance

A short detour to the nature and significance of international law merits some deliberation. There are certain significant and distinct aspects of international law that need to be underscored at the very outset. It goes without saying that international law regulates the behaviour of states, and as it is said, "almost all nations observe almost all principles of international law and almost all of their obligations almost all the time."[3] There are certain basic principles and binding rules developed over the years, through custom or treaties, which have brought in an element of bindingness and obligation in international law. Dixon stressed on this aspect when he observes: "international law comprises a system of rules and principles that govern the international relations between sovereign states and other institutional subjects of

[2] See generally, R. P. Dhokalia, *Teaching of International Law International Institutions in the Indian Universities*, 13 *JILI* 305-325(1971).

[3] LOUIS HENKIN, HOW NATIONS BEHAVE, 47 (Columbia University Press 1979).

international law."[4] Oppenheim would describe international law as the "body of customary and treaty rules which are considered legally binding by the States in their intercourse with each other."[5] Notably, the *consent* is the basis of such a law.[6] States have a moral obligation to abide by international law having consented to it, and it is so well reflected in the principle of *pacta sunt servanda*[7] as regards treaty compliance. It is also exemplified by the requirement of *opinio juris* for customary international law.[8] Consent may be seen also as entailing *obligation* on the part of the consenting party or parties. The element of *consent* has been very instrumental in putting in place a body of law that seeks to bring *order* and *peace* amongst nations thereby paving the way for human prosperity and well-being of world community.

Therefore, international law has a pivotal place as regards maintaining order in the comity of nations. The accepted set of principles and rules form the bedrock of relations amongst nations as to what is permissible and also as to what ought to remain unacceptable. The dynamics of international is such that it requires reflecting upon some of the core issues that central to the acceptability and continued relevance of international law, which many view as a "set of artificial institutions and rules, created by human beings that

[4] MARTIN DIXON, TEXTBOOK ON INTERNATIONAL LAW, 3 (Oxford University Press 2007). Emphasis added.

[5] L OPPENHEIM, INTERNATIONAL LAW*: A Treatise*, 4 (Longman 1967). To quote Henderson, "*International law is the collection of rules and norms that states and other actors feel an obligation to obey in their mutual relations and commonly do obey*." See, CONWAY W. HENDERSON, UNDERSTANDING INTERNATIONAL LAW, 5 (Wiley-Blackwell. 2010)

[6] International law in this day and age is enshrined in conventions, treaties and standards.

[7] The Vienna Convention on the Law of Treaties, 1969, art. 26.

[8] JACK L GOLDSMITH AND ERIC A POSNER, THE LIMITS OF INTERNATIONAL LAW, 189 (Oxford University Press, 2005)

seeks to improve cooperation among states."[9] It relates to the conduct of independent states.[10] It is said, "The science of international law is merely a name for the formal method of studying the subject better described as the philosophy of international law."[11] It owes its birth to Hugo Grotius who, through his pioneering work, laid down a solid foundation for "law of nations" to flourish and develop in the years to come. International law has developed with time, and, as such, it reflects the imprints of changing times. Therefore, understanding the conceptual depths and dynamics of international law necessitates delving deep into some of the important aspects of human history and emergence of various ideas and institutions that contributed to the gradual growth of law governing the relations of nations in different, and differing, periods. All this has to be analyzed in view of the fact that international law remains crucial to promoting social and economic development besides promoting the cause of international peace and security. It is significant, as one theory puts it, that "international law emerges from states acting *rationally* to maximize their interests, given their perceptions of the *interest of their states* and the distribution of state power."[12] *State interest* thus becomes an important influencing factor as regards the dynamics of international law along with the *rational choices* that states make affecting the way international law works or may work in the face of ever-emerging new challenges and predicaments as and when the arise. To quote

[9] Andrew T. Guzman, *Rethinking International Law as Law*, Proceedings of the Annual Meeting (American Society of International Law), 103 INTERNATIONAL LAW AS LAW 155-157 (2009).

[10] Roland R. Foulke, *Definition and Nature of International Law*, 19 COLUMBIA LAW REVIEW, 429(1919).

[11] *Id.* at 465.

[12] JACK L GOLDSMITH AND ERIC A POSNER, THE LIMITS OF INTERNATIONAL LAW, 3 (Oxford University Press 2005).

*in extenso*, the role and importance of international law is so well summed up by Henderson in the following observation:[13]

> "Try to imagine a world with global trade grinding to a halt, diplomats unable to represent their governments to other states, radio and television signals jamming each other across borders, students unable to study or go backpacking in other countries because they cannot acquire visas, health and economic development programs in poor countries screeching to a halt because the UN ceases to exist, or the degradation of the oceans, outer space, and Antarctica because these common heritage spaces no longer enjoy the protection of treaties. Modern international life, as we know it today with its pervasive and predicable patterns of cooperation, would be impossible without the rules and understandings bound up in international law. Without rules to develop and sustain multiple kinds of positive interactions, international relations would be little more than a set of states co-existing in an atmosphere of constant worry over security threats. The "law of nations," as these rules are sometimes called, is at least a cornerstone, if not the foundation, of modern international relations."

## III. Indian Legal System *vis-à-vis* international law

Looking at international law from the perspective of the legal system in India has to primarily begin with the Constitution, though one may delve deep into the ancient past

[13] CONWAY W. HENDERSON, UNDERSTANDING INTERNATIONAL LAW, 7(John Wiley & Sons, Ltd. 2010)

in India to make the aforesaid perspective clearer, more so in view of the principles and practices that remain archived in annals of Indian history.[14] Nagendra Singh aptly reminds that "…the contribution of India towards the evolution of inter-state law is indeed profound" and further points out two important contributions in this respect: "the universality of the application of *inter-state law* and second respect for that law helping its *automatic enforcement*."[15] He debunks the claim made by Oppenheim that international law "in its origin s essentially a product of Christian civilization and began gradually to grow from the second half of the middle age". In ancient India, inter-state law was not confined by civilizational limits as one finds in cases of Muslim Law of Nations or in an understanding of international law that arguably remains rooted in Christian civilization. Universality marked such inter-state law in ancient India, and it dates back to two thousand years.[16] Universality of application of such law has given birth to several basic principles of international law.[17] Beginning with *Smritis*, one may take note of the rules of war that were based on consideration of "humanity and chivalry". Manu in *Manusmriti* notably says, "One who surrenders or is without arms or is sleeping or is naked, or with hair untied (i.e. unprepared) or is

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14 See, C.J. Chacko, *International Law in India: Ancient India*, 1 *IJIL* (1960-61); M.K. Nawaz, *The Law of Nations in Ancient India*, VI INDIAN YEARBOOK OF INTERNATIONAL AFFAIRS (1957). It is pertinent here to quote the following observation of Nehru: "*It is perhaps imagined by some people that international law took shape under Grotius or some other scholars in the West, and that there was no such thing in the countries of Asia or elsewhere. That, of course, cannot be correct, because if there is any kind of civilized order there must be some kind of international law and ideas in regard of the relationships of States*." Quoted in V.S. MANI, "*An Indian Perspective on the Evolution of International Law on the Threshold of the Third Millennium*", ASIAN YEARBOOK OF INTERNATIONAL LAW (2004). Also see, B.C. Nirmal, *Ancient Indian Perspective of Human Rights*, 43 *IJLI* 445-478(2003), and B.C. Nirmal, *International Humanitarian law in Ancient India*, in V.S. MANI (ed), OXFORD HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 25-38 (2007)

15 Nagendra Singh, *India and International Law*, 21 REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL 600 (1968). Emphasis added.

16 *Id*. at 601.

17 *Ibid*.

an on-looker (non-combatant) must never be killed."[18] Customary laws governing inter-state conduct have also been scribed by the *Smritis*. There are many such examples where one may notice elements of modern day principles of international law. There are several many important aspects of international law such as the right to asylum. The rights of a landlocked state to transit through foreign territory, the treatment of aliens or foreign nationals and so on in respect of which India evolved rules and regulations dating back to some years before Christ.[19] C H Alexander also observes:[20]

> "Before the Islamic conquest India never became a really centralised political entity but indulged in widespread decentralisation. Inter-State relations in the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a temporary or semi- permanent character, etc."

In the modern times, more so in the post-independence period, Nehru made an important contribution in the form of what is known as concept of *Panchsheel*, which stresses upon the following five principles:

(1) Mutual respect for each other's territorial integrity and sovereign
(2) Mutual non-aggression
(3) Mutual non-interference in each other's internal affairs;
(4) Equality and mutual benefit; and

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18 *Id.* at 602.
19 *Id.* at 610.
20 C H Alexander, *International Law in India*, 1 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 289(1952).

(5) Peaceful co-existence.

When India adopted a new constitution in 1949, it clearly provided under Article 51 the state has to endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.[21] Article 51 remains foundational to the India's foreign policy and state practice. It is a reflection of constitutional mandate as to how India is act *vis-à-vis* other member so of the world community and also how she is expected to act when it comes to obligations under international law.

The foregoing provision has to be seen in view of the fact that international law today is not confined to regulating the relation between the States. Scope continues to extend. Today matters of social concerns, such as, health, education and economics apart from human rights fall within the ambit of International Regulations. International Law is more than ever aimed at individuals. It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.[22] Therefore, the constitutional schema as to the applicability and relevance of international law within the broad framework of municipal law in India bears great significance and it also showcases how constitutional provisions help integrate international law into the fold of

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[21] Basu observes, "*Even in countries where there is no such directive contained in the Constitution, the Courts act on the presumption that the Legislature did not intend to violate the principles of international law and would be slow to interpret a statute to violate rules of international law if any other possible construction remains*." See, D D BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, 1-4 (2015)

[22] See, M P JAIN, CONSTITUTIONAL LAW OF INDIA (2018)

municipal law in India. Article 51 has been instrumental in allowing the courts to have held that by virtue of this article, certain important international instruments have become part of Indian law, the only condition being that they are not inconsistent with the municipal law. Therefore, such instruments may be relied upon and even enforced.[23] H V Kamath, in a discussion on draft Article 40 (now Article 51), observed thus:[24]

> "I hope that in the new world in which we are living today and in which we are playing and are going to play such a vital part, we will be able to bring about a vital change in international relations, so that at an early date we will have really one world Government or one Super-State to which the various nation-States of the world will have surrendered part of their sovereignty and to which all these nation-States will owe willing allegiance and will accept the Sovereignty of this Super-State."

The world today is far cry from the one envisioned in the foregoing observation. However, there is no denying the fact that we as a nation are going to play a vital role in the comity of nations, and that requires us to be cognizant of international law as it exists today, in its myriad manifestations.

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[23] See for examples, Vishaka v. State of Rajasthan, AIR 1997 SC 3011; People's Union for Civil Liberties v. Union of India, (1997) 3 SCC 433; D.K. Basu v. State of W.B., AIR 1997 SC 610; Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625; Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526

[24] Constituent Assembly Debate, Vol. VII, at 595-605 (25 November, 1948).

## IV. Methods of Teaching of International Law

Teaching of international law has been through a sea change with the emergence of specified areas of study within the broad framework of international law. Private international law, international trade law, international environmental law, international human rights law, international criminal law, diplomatic law, international economic law, international security law, international humanitarian law are among the major areas of study that have gained importance and relevance in the preceding few decades as a result of the transition that world has been through, more so after the advent of the globalisation. This sea change has also got reflected in the study and teaching of international law. Much water has flown since the days when public international law would the core area of study inclusive of topics such as nature of international law, sources of international law, law of recognition, law relating to treaty and customary international law. The gradual and steady growth of aforesaid areas of study necessitates a change in the way international law should be taught, though there remains ample space and scope for some of the time-tested method of teaching law, and the same may be applied to teaching international law. Classroom teaching may make good use of *Socratic Method*[25] of teaching which many believe is so important that "a law school just isn't a law school without the Socratic method".[26] It is a method of teaching using the tools of question and answer. According to Alan Stone, it aims "to develop crucial legal analytic skills, to accustom the student to

[25] Christopher Columbus Langdell first introduced the Socratic Method at Harvard Law School for teaching law in the 1870's. Before Socratic method, "lecture-textbook method" was in use. "*Langdell believed that a law school should be a place to study law as a science, just as other university departments studied subjects by the scientific method*." See, Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 JOURNAL OF LEGAL EDUCATION 241 (1992).

[26] David D. Garner, *Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, BRIGHAM YOUNG UNIVERSITY LAW REVIEW 1597(2000).

the lawyer's adversary style of exchange, and to provide a forum in which the student speaks in public."[27] Hawkins-León lists the following benefits of Socratic Method. It helps students to: (1) develop analytical skills; (2) force them to think on their feet; (3) encourage intellectual rigor; (4) learn about the legal process; and (5) learn about the lawyer's role or function.[28]

Another method of teaching preferred by many is *Problem Method*[29] as "it provides students the opportunity to apply rules of law to complicated written fact patterns and then to discern a "correct" answer that is similar to a practicing lawyer's approach to mastering the law."[30] Engaging with a given problem trains a student to think of every possible aspect of the law and practice of international law that may be useful and effective in finding a just solution to the problem given. To quote Moskovitz, "The merit of the problem method is that it more effectively forces the law student to reflect on the application of pertinent materials to new situations and accustoms him to thinking of case and statute law as something to be used, rather than as something merely to be assimilated for its own sake."[31]

1. Seminar
2. Group Discussion
3. Moot court competitions
4. Essay Competition
5. Poster making competition

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[27] Alan A. Stone, *Legal Education on the Couch*, 85 HARVARD LAW REVIEW 392-409 (1971).

[28] See, Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, BRIGHAM YOUNG UNIVERSITY LAW REVIEW 1(1998).

[29] See, J. H. Landman, *The Problem Method of Studying Law*, 5 JOURNAL OF LEGAL EDUCATION 500, 501 (1953).

[30] Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1 BRIGHAM YOUNG UNIVERSITY EDUCATION AND LAW JOURNAL (1998).

[31] Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 JOURNAL OF LEGAL EDUCATION 249 (1992).

Teaching of international law has to take in account the dynamics of international relations and politics that play an important role as regards the working of international law. Moreover, it goes without saying that appropriate or otherwise teaching of a law, be it international law or any other law area of law, depends to a large extent on the structure, content and quality of legal education being imparted in a country.[32]

## V. 'International Law' teaching in India

Although there have been perceptible changes, there remain problems and challenges as regards teaching international law in universities, law colleges and law departments in India. To begin with, international law received no or little attention in legal education programme of universities and colleges. After many years, traditional international law in the sense of 'Law of Peace' laws of war and law of United Nations began to be taught either as optional subjects or a part of it as a compulsory subject in universities. Fortunately, legal educators have now recognised the importance of teaching international law in law schools but it still has miles to go ahead to receive the place in teaching and research as comparable to many European and American universities. As the matter stands now, law of peace in generally taught as a compulsory subject to law students in almost all universities but centres of higher learning like BHU, DU and NLU also offer courses in International human rights law, international humanitarian law, international environmental law, international space law (NALSAR, NUJS) and International Criminal Law and so on.[33]

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[32] See, B C Nirmal, *Legal Education in India: Problems and Challenges*, IIUM LAW JOURNAL (2012)

[33] See, Christina Binder, Jane A Hofbauer, *Teaching International Human Rights Law: A Textbook Review*, 28 EUROPEAN JOURNAL OF INTERNATIONAL LAW 1397–1414 (2017),

Therefore, teaching of international law in Indian law school and law colleges generally comprises public international law, though of late private international law (conflict of laws) has also been included in some of the institutions imparting professional legal education. Noticeably, there is a growing interest in new emerging areas such as space law, international investment law, international criminal law, comparative constitutional law, international environmental law and so on. However, as stated, it is generally the public international law (PIL) that is taught to students pursuing law degrees in India, more so in traditional law departments and law colleges. The syllabus of PIL generally comprises topics such as nature and development of International law, sources of international law, relationship between international law and municipal law, state responsibility, law of treatise, international humanitarian law, law of the sea, state jurisdiction, sovereign, diplomatic, and consular immunity (privileges). Except few premier institutions, in most of the institutions, the method of teaching international law is based on textbooks. In few intuitions, case law method is adopted.

## VI. Challenges

The major challenge remains in the way public international law is being taught in India in majority of the institutions. In traditional law colleges and law departments,

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Etienne Kuster, *Promoting the Teaching of IHL in Universities: Overview, Successes and Challenges of the ICRC's Approach*, available at https://www.icrc.org/en/document/promoting-teaching-ihl-universities-overview-successes-and-challenges (Last Visited on 01.05.2022), David A. Wirth, *Teaching and Research in International Environmental Law*, 23 HARVARD ENVIRONMENTAL LAW REVIEW 423-440 (1999), Stacy Caplow and Maryellen Fullerton, *Co-Teaching International Criminal Law: New Strategies to Meet the Challenges of a New Course*, 31 BROOK. J. INT'L L. 103 (2005), Camilo Guzman Gomez, *Teaching Space Law in Law Schools: A Necessary Challenge in the Developing Countries*, International Astronautical conference (Naples, 2012).

*generally*, PIL remains the only aspect of international law that is taught, and that too in such a mechanical and turgid manner that it fails to evoke interest in students who view it as a subjects that would not serve any practical purpose for them professionally. New emerging areas such as space law and areas of international law that bear great significance in the prevailing times remain ignored in such institution. Despite the availability of reading and reference materials in online sources that are authentic and reliable, international law continues to be taught and read relying *mainly* upon not-so-updated old edition textbooks on international law. The basics of the subject therefore fail to be inculcated in the young law students who, as a result, continue to view the subject of international law as something that has to be read only as a stepping stone towards getting a law degree. Continued disregard and apathy towards other aspects of international law continues to be a source of major concern, more so when all this is viewed against the backdrop of a changing world which is a far cry from what it used to be few decades ago. In order to understand the dynamics of the international legal order, it is important to be acquainted with the hydra-headed structure of international law that has come a long way since its nascent and formative years. Therefore, one major challenge as regards teaching of international law is its losing touch with the real-life dynamics of the practice of international law.

## VII. Conclusion

Teaching of international law has to be in keeping with the changes that have influenced the dynamics of law at the national and international levels. The last few decades archive some of the significant developments that have added to new dimension to international law both in terms of theory and practice. There is a dire need to change the patterns of teaching international law that is more responsive and alive to changes

affecting human life globally. Besides including the theory and practice, the teaching of international law should take care of the fact that its teaching has to be such that a student is in position to find its relevance in this day and age. Moreover, it is not sufficient to introduce the students of law to the basic of public international law, and therefore, to the extent possible, they should also be introduced to the basics of the different dimensions of international law in the present day global order. This will help them have a broader perspective of how things are at international level as regards the corpus of 'international law' and working of international institutions, and their impact upon domestic law and life of a nation.

## Chapter - 6

# PRACTICAL TRAINING IN LEGAL EDUCATION

*Anil G. Variath**
*Amana Khare***

## I. Introduction

Quality education is the backbone of any country. It shapes the minds of the learners and leads to the development of society. "Legal education, when it is done successfully and well, will produce graduates who will be good lawyers, technically proficient in, at, and with the law - persons who understand how to engage in legal analysis and the construction and assessment of legal argument, who understand and can employ adeptly and imaginatively legal doctrines and concepts, and who can and will bring skills and knowledge of this sort regularly and fully to bear upon any matter of concern to any client willing and able to employ them in order to further the client's interest, provided only that they, as lawyers, do not do what the law prohibits lawyers from doing for clients."[1] A "successful" legal education will yield lawyers that would not only help them to become good lawyers but will also help lawyers shape the society.[2]

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1 Richard Wasserstrom, *Legal Education and the Good Lawyer,* 34 (2) JOURNAL OF LEGAL EDUCATION 155, 156 (1984).

2 *See generally,* S. D. Ross, *The Role of Lawyers in Society,* 48 (1) THE AUSTRALIAN QUARTERLY 61-176 (1976).

"The purpose of legal education is twofold: One view favouring that legal education should be treated as a part of liberal education; the other view opining that it should be treated as professional education. As professional education, legal education equips law students for filling different roles in society and discharging various law jobs, the range and scope of which are always expanding in the modern democratic society, e.g., as policy-makers, administrators, lawyers, law teachers, industrial entrepreneurs etc. Accordingly, it is realized in modern India that legal education ought to have breadth, depth and width."[3] The goal of legal education should be preparing not only lawyers but also should impart training for policymakers and services for the public interest.[4]

Legal education should be focused on the learning outcomes for the students. The curriculum should be made in the manner that it caters to the requirement of the students to face the real world after completion of their course.[5] Legal education is imparting legal knowledge to the students and training them for the real world by giving them practical knowledge. Theoretical knowledge is not enough if one doesn't know how to apply it in real situations. Only by reading and memorising laws, one does not learn the applicability of the law. When students are trained for litigation they understand the practical application of law in the real world. They are prepared to use their minds analytically and critically by learning to break down the issues and applying the relevant provisions and rules to the particular case/situation. Training students by exposing them to practical experience helps the students to develop a better understanding of the laws.

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[3] A. Lakshminath, *Legal Education, Research and Pedagogy – Ideological Perceptions,* 50 (4) JOURNAL OF THE INDIAN LAW INSTITUTE 606-628 (2008).

[4] John R. Peden, *Goals for Legal Education,* 24 JOURNAL OF LEGAL EDUCATION 379 (1972).

[5] Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systematic Change in Legal Education*, 67 (2) JOURNAL OF LEGAL EDUCATION (2018).

## II. Clinical Legal Education in India

'UN Basic Principle on the Role of Lawyers' states that "Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law."[6] The idea of clinical legal education is not new. "The concept of a 'clinic' emerges from a historic practice in the medical profession, where a medical student is given exposure to 'live' patients to develop the skills that are imperative for the medical profession. The concept of a 'clinical' approach in legal education, therefore, refers to providing the law student a learning environment rooted in ground realities, to understand not only what the law is, but how the law works in society."[7] The clinical education in law came from the experiment in the USA where most of the legal aid clinics got established in the 1940s. The initial legal aid clinics in the USA were established in Harvard, Minnesota and Northwestern in 1913.[8]

The pioneer of clinical legal education in India were Justice V. R. Krishna Iyer and Justice P. N. Bhagwati who were heading an expert committee on Legal Aid, submitted a report to the Ministry of Law and Justice on reforming legal education by imparting practical training to the students of law.[9] Professors like Upendra Baxi have also contributed in advocating the need for

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[6] Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 Aug. to 7 Sept. 1990 https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx (Last visited on Feb, 25, 2022).

[7] Saumya Uma, *Clinical Legal Education in India: Emerging Trends and Contemporary Relevance*, 45 (3) Quest in Education 2-13 (2018).

[8] Quintin Johnstone, *Law School Legal Aid Clinics,* 3 (4) JOURNAL OF LEGAL EDUCATION 535-554 (1951).

[9] Saumya Uma, *Clinical Legal Education in India: Emerging Trends and Contemporary Relevance*, 45 (3) Quest in Education 2-13 (2018).

having clinical legal education to serve the social purposes that legal education intends to serve.

The importance of practical training for lawyers has been recognised from the time when legal education was being formalised.[10] The Bar Council of India constituted under the Indian Advocates Act, 1961 is endowed with the responsibility by the Parliament to prescribe and maintain the standards of legal education in India. From time to time, the Bar Council of India has laid down rules for incorporating the training in the curriculum. The Bar Council of India Training Rules 1995 required fresh graduates to compulsorily practice under a senior advocate before they were registered in the bar. However, this was struck down by the Supreme Court in V. Sunder v. Bar Council of India (1993) 3 SCC 176.[11]

The transformation in legal education in India was brought by Padma Shri N. R. Madhava Menon through his various contributions in form of various literature and administrative actions. He was fondly referred to as 'living legend of law' by the International Bar Association and 'the father of modern legal education' by the Bar Association of India.[12] The biggest transformative step was setting up of national school of law in Bangalore. This was set up with the aid of the 'the judiciary, Bar Council of India, Karnataka Bar Council, the Bangalore University and the Government of Karnataka.'[13] The main objective behind

[10] George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 (2) JOURNAL OF LEGAL EDUCATION 162 -193 (1974).

[11] Saumya Uma, *Clinical Legal Education in India: Emerging Trends and Contemporary Relevance*, 45 (3) Quest in Education 2-13 (2018).

[12] R Venkata Rao and Prakash Sharma, *An assessment of contribution of Professor N. R. Madhava Menon Towards Modern Legal Education: A Tribute,* 3 (I) MNLU Nagpur Contemporary Law Review 15 (2019).

[13] Meera Mathew, *The Metamorphosis of legal education in India - Bane or Boon - A bird's view*, 14 THE JOURNAL OF COMMONWEALTH LAW AND LEGAL EDUCATION (2020) https://law-school.open.ac.uk/sites/law-school.open.ac.uk/files/files/JCLLE/spring-2020/metamorphisis-legal-education-india.pdf

the setting up of this was to provide better lawyers at the bar and judges at the bench.[14] "In India, he championed the concept of 'socially relevant legal education' in which lawyers would be trained not just in the rules of law but also in the social and ethical responsibilities of lawyers to the society at large. Legal education had to become justice education. And in the years to follow, Dr Menon continued to approach the development of clinical legal education with an international scope, making him a pioneering global justice educator."[15] The introduction of the national law school at Bangalore paved a way for similar institutions all across India. Currently, there are 25 national law schools in India. National law schools brought the reformation in legal education and a more focused approach was adopted in the pedagogy of legal education.

Clinical Legal Education (CLE) was set up for developing the perceptions, attitudes, skills and sense of responsibilities that the lawyers are expected to assume when they complete their professional education.[16] CLE has wide goals of preparing the students with practical knowledge as well as social responsibility. There are different methods to equip the students with practical training to help them while practising law. The Bar Council of India has framed the Rules of Legal Education, 2008[17] which has made four clinical legal courses compulsory for all the universities and institutions offering three years or five years law graduation degrees. These are Drafting, Pleading and Conveyancing,

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[14] N. R. Madhava Menon, *The Transformation of Indian Legal Education – A blue paper,* HARVARD LAW SCHOOL PROGRAM ON THE LEGAL PROFESSION (2012), https://clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf.

[15] Frank S. Bloch, *N. R. Madhava Menon: A Global Justice Educator's Approach to training clinical law teachers,* 7 (1) ASIAN JOURNAL OF LEGAL EDUCATION 7-16 (2020), https://doi.org/10.1177%2F2322005819886385.

[16] N. R. Madhava Menon, *Clinical Legal Education: Concept and Concern,* 1 IN CLINICAL LEGAL EDUCATION (N. R. Madhava Menon, ed., 2013).

[17] Bar Council of India, Rules of Legal Education, 2008 http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf (Last visited on Feb. 20, 2022).

Professional Ethics & Professional Accounting system, Alternate Dispute Resolution and Moot court exercise and Internship. These subjects are being taught in the law schools and are helping the students to gain practical knowledge of the subject.

**A. Legal Aid Clinics**

Almost every national law school and prominent law colleges have set up legal aid clinics in their institutions. These serve the dual purpose of providing free legal service to the economically weaker sections of society and educating students with the experience of working in a real-life situation.[18] The Constitution of India guarantees justice – social, economic and political to every citizen of India.[19] It is a method by which law schools can contribute in achieving the goals envisaged in the Constitution of India. Furthering the purpose, the Bar Council of India has made it compulsory for all law schools to set up legal aid clinics in their institutions.[20] Legal Aid clinics aim to help the marginalized society and, also engage students in understanding social responsibility. Some law colleges have 'social lawyering' and 'public interest lawyering' as objectives of their legal aid clinics.[21] These activities make students sensitive towards society and develop their interests in serving society.

Other than serving the 'social service' component of the legal aid clinics, these clinics also help the students professionally by giving them practical training for real-life situations. Prof. N. R. Madhava Menon and Prof. V. Nagraj in their chapter on the

[18] Rupali Mohan, *Importance of Legal Aid Clinics in Law Schools,* LEGAL DESIRE https://legaldesire.com/importance-of-legal-aid-clinics-in-law-schools/ (Last visited on Feb. 20, 2022).

[19] *See* Preamble to the Constitution of India.

[20] Bar Council of India, Rules of Legal Education,2008 http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf (Last visited on Feb. 20, 2022).

[21] Prabhat Kumar Sinha and Shivam Kaushik, *A Conception of Legal Education and Social Responsibility*, 10 JOURNAL OF INDIAN LAW AND SOCIETY 47-62 (2019).

development of clinical education[22] write the following as the main objective of the clinical legal programmes:

i. To acquaint the students with the lawyering process generally and skills of advocacy in particular
ii. To expose students to the actual social milieu in which disputes arise and to enable them to develop a sense of social responsibility in professional work
iii. To be able to seek and critically consume knowledge from outside the traditional legal areas for better delivery of legal services
iv. To understand the limits and limitations of the formal legal system and to appreciate the relevance and use of alternate modes of lawyering
v. To imbibe social and humanistic values in relation to law and legal processes while following the norms of professional ethics.

These objectives can be fulfilled by legal aid clinics in conducting activities like legal literacy programs, seminars, counselling, mediation, assisting lawyers with research and making drafts for them.
Although the idea behind the legal clinic aids is noble, but it has lots of implementation issues. Some of them are as follows:

i. The responsibility of running the legal clinic is on the law school which have constituted the legal aid cell. The major problem that law schools face is that they do not have adequate resources to conduct activities of the legal aid clinics. Law schools do not get sufficient grants from the government for the activities of the law schools and they have to manage their own expenses, which leads to

[22] N. R. Madhava Menon & V. Nagraj, *Development of Clinical Teaching at the National Law School of India*, IN CLINICAL LEGAL EDUCATION (N.R. Madhava Menon ed. 2013).

minimal or no funds for the legal aid clinics.[23] The dearth of funds for legal aid creates a problem for carrying out various operations of the clinics. Therefore, even after establishing law clinics, they are not able to function properly. Legal aid clinics in law schools should get grants from the state and central government for carrying out activities by the legal aid clinics. A small contribution has started from the Department of Justice, Government of India where there are giving a fund of Rs. 1,00,000 (one lakh) under the Nyaya Bandhu programme for establishing the Pro-Bono club in law schools to carry out the work of legal aid clinics. As on January 18, 2022 there were 29 law schools registered under this scheme.[24] Though the fund provided by the government is not much, but it will at least help the legal aid clinics to do some work. Until and unless the government or other organization is going to fund the legal clinics the future of legal clinics will remain blurry.

ii. Lack of students' interest in participating in legal aid clinics is another reason for the improper functioning of the clinic.[25] There are no incentives for the students who work in the legal aid clinics. They are more interested and enthusiastic in moot courts and internships which can get them a pre-placement offer or help them in making contacts with the recruiters. Legal aid clinics are not seen as a preferred option for doing internships by the students. This problem can be solved if working in legal aid clinics can fetch them marks and extra credits. Working in legal

[23] See, Kian Ganz, *Funding crunch looms over Indian law schools,* LIVE MINT, https://www.livemint.com/Politics/FXxhWV2V9srpQEFMi5paPO/Funding-crunch-looms-over-Indian-law-schools.html (Last visited on Feb. 20, 2022).

[24] List of Law Schools associated with Pro-Bono Club Scheme, NYAYA BANDHU, DEPARTMENT OF JUSTICE https://www.probono-doj.in/list-of-law-schools.html (Last visited on Feb. 20, 2022).

[25] Pranjal Pranshu, Legal Aid Clinic in Law School: Issues and Answers, FAST FORWARD JUSTICE,

aid clinics for a few weeks can be made compulsory for the students so that they also learn to contribute to society.

iii. Faculties are already burdened with academic and administrative work. The charge and responsibility of legal aid clinics come as additional work for the faculties. Thus, the faculty gets less time to dedicate to the legal aid clinics. A dedicated faculty is needed to run the clinic because of the nature of the work which is time and energy-consuming. Funds from the government can help law schools to have a faculty devoted towards coordinating the work of the clinic. An enthusiastic faculty can motivate students to work for the legal aid clinics. Additional scores may be given to the faculties as an incentive for carrying out legal aid activities.

iv. It is necessary to bring awareness about legal aid clinics. Pranjal Prabhanshu in his article[26] writes that the lack of awareness about the existence and working of the legal aid clinics is also an impediment in the working of the legal aid clinics. The beneficiaries of legal aid are not aware of the existence of the legal aid clinics which results in a smaller number of people approaching the clinics. Some of the people who are aware of the existence of the legal aid cells are not aware of the way in which they can seek help. Advertisement of the legal services is prohibited by the Bar Council of India, stopping the legal aid clinics to promote the legal services being provided by the clinics. To cater for this issue, an exception can be made for the legal aid clinics to advertise about giving free legal services to the poor and marginalised people. The clinic can also perform *nukkad naatak* and awareness drive for the people so that they get

[26] *Ibid.*

to know about the existence and working of the legal aid cell.

v. Another important issue in providing legal aid services by the student is the limited nature of the service that a student can provide to the beneficiary. Rules of the country do not allow students to appear before the judges in the court.[27] So the scope of the legal aid services that can be provided from the clinics is small. This problem has been solved in the United States of America for a very long. Students in the US can practice in the court under the 'student practice rules' which gives limited license to the final year students to practice before the judges. Similar provisions can be made in the Advocates Act of 1961 to allow students to have a limited license to practice before the court.

Unlike US and UK, India also does not allow law teachers to practice law in court, a law practitioner can take classes of the students whereas a law teacher cannot practice advocacy. If teachers will be allowed to practice law, they will be in a better way to help students to teach law and guide 'student advocates' in the same manner a doctor guides the student in the medical profession under their supervision.[28]

**B. Internships**

Internships are the practical experience that a student gets while working under a supervisor in the real world. It is a voluntary, temporary work placement undertaken by a student to

[27] Supriyo Routh, *Providing Legal Aid: Some Untried means,* 50 (3) JOURNAL OF THE INDIAN LAW INSTITUTE 375-390 (2008).
[28] *Ibid.*

get acquainted by working in an organisation or an individual.[29] It is an important tool in teaching students and preparing them to work in the professional environment. The idea that students should learn from practical experience in the workplace is not new. It has always been a method to equip learners with the skills to increase their professional capabilities. The application of laws can be best understood by observing them in an internship.

Bar Council of India has mandated for every law student to undergo internships for a minimum period of 12 weeks for a three-year course and 20 weeks in case of five-year course during the entire period of legal education under non-governmental organisations, trial and appellate advocates, judiciary, legal regulatory authorities, legislatures and parliament.[30] A student can also intern under other legal functionaries, corporates, law firms, legal process outsourcing institutions, think tanks, research organizations, banks, embassy, media houses and research wings of universities. Each student is also required to maintain an internship diary for recording the internship which will be evaluated by the faculty member at the end of each internship and the cumulative marks would be added to the mandatory legal aid clinical course.

Internships not only prepare students for the professional world but also help students in exploring employment opportunities at different avenues. Many students have also secured pre-placement offers from organizations while interning under them. Some organizations/individuals offer stipends to the interns for carrying out work for them but paid internships are scarce. The overall development that a student undergoes in internships is unmatched. Law schools must facilitate students

[29] *See,* Jens Florian Binder & Thom Baguley, *The academic value of internships: Benefits across disciplines and student backgrounds*, 41 CONTEMPORARY EDUCATIONAL PSYCHOLOGY 73-82 (2015) doi:10.1016/j.cedpsych.2014.12.001

[30] Bar Council of India, Rules of Legal Education, Schedule III, Rule 25.

for getting internships so that all the students without any difference in the opportunities can secure an internship and learn from them. The curriculum prepared by law should also equip students with the knowledge of the law so that they can perform well in their training. The procedure, drafting and formats should be taught to the students so as to help them in the internship. It serves as a practical test of the things learned in the classroom.

There are lots of problems with the current internship program in India. These are:

i. Most of the internships are unpaid. The curriculum that is followed in almost all of the national law universities makes it compulsory for 5 years law students to undergo 9 internships in all the semester breaks. These internships are mostly unpaid and often burden the students and parents to bear extra costs above the high universities fees.

ii. An internship is mostly for 3-4 weeks during the semester break which makes it difficult for students to prove their skills and get an offer from the organisation/lawyer. The number of students who get an offer to extend their internship is quite low. Even after getting an offer to continue doing an internship in the hope of a placement offer puts pressure on the student for managing the internship along with the studies and submissions at the college. This can further lead to a toll on the student which can disrupt the studies of the student leading to more problems.

iii. The opportunities of getting an internship are also not the same for everyone. Most of the corporate houses and law firms are located in the metro cities. It is quite easy for a law student located in an advantageous location like Mumbai, Delhi and Bangalore to get an internship with lesser effort than the students studying or coming from a tier-2 city.

Moreover, the cost of doing an internship for a student from a tier - 2 cities in a metro city is very high which can be utilised only by the privileged class of people.

iv. Many universities do not have well-functioning training and placement cell to provide internships and placement to their students. The universities lack resources to conduct internship drives and to support students who can't afford to do an internship in some other cities. Many a time students have to look for internships on their own and through their contacts. It serves as a big impediment for the students whose families do not have come from a law background. This discourages the students and widens the gap of privilege between the students.

According to the United States Department of Labour and a few other states, an internship in a profit-making company can be unpaid only if "the internship is similar to that of an educational institution, regular paid workers are not displaced, the intern works under close observation, the employer derives no immediate advantage from intern activities, there is no guaranty of employment upon internship completion and it is clear upfront that there is no expectation of payment. The test is envisaged in all or nothing format i.e. all conditions must be satisfied for paying or not paying an intern. This test is based on the interpretation of "employee" by US Supreme Court (USSC) in Portland Terminal case."[31] A similar kind of law/rule can be made in India which will give at least some hope for the interns to get paid for their work done. At present, there is no labour/employment law in India that guaranty the interns' payment for the work they are doing at the

[31] Shashank Pandey and Bhakti Avasthy, *The menace of unpaid legal internships: A statistical analysis,* BAR AND BENCH, https://www.barandbench.com/apprentice-lawyer/unpaid-the-menace-of-unpaid-legal-internships-a-statistical-analysis-internship-menace (Last visited on Jan. 15, 2021)

internships or give them a stipend so that they can bear the cost of doing an internship.

A definite policy should be made by the Bar Council of India to regulate internships and at least a minimum stipend can be paid to the interns to support them during the period of internships. Although this may also affect the employer's willingness to provide internships, but a balance needs to be made.

**C. Moot Court Exercises**

Moot courts are the mock court exercises where the student is given a problem to analyse, research, prepare written submission and then present the case.[32] It prepares a student for various tasks that a legal professional does. It will be wrong to say that moot courts are meant only for enhancing litigation skills. Apart from enhancing litigation skills, moot courts equip a participant to analyse problems and research relevant laws which are important for every field of law that a student wants to prepare. Some of the benefits of conducting moot court exercises are:

a. It helps students to analyse problems, thus increasing their comprehensive and analytical skills. They learn to take out relevant facts from a pool of facts of the case. Critical thinking is also enhanced while working on a moot problem;

b. Students learn to research relevant laws and prepare a written submission for the given problem. They learn the skill of drafting written submissions and their knowledge of drafting is put to test.

[32] *Mooting: What is it and why take part?,* UNIVERSITY OF OXFORD, https://www.law.ox.ac.uk/current-students/mooting-oxford/mooting-what-it-and-why-take-part (Last visited on Feb 26, 2022).

c. Students learn court's mannerism and ethics

d. It develops the student's skill to submit oral presentations before the court.

e. Moot court exercises are generally group exercises that cultivate the students to work in a team and learn from their peers.

f. It develops the students' interest in litigation and also prepares them for real-time litigation.

g. Moot court competitions are a good way of networking with students and faculties from different universities and sometimes from different countries as well. Moot court judges are generally lawyers or people working in law firms.

Moot courts can be a tool for clinical education as well as for academic learning. As a clinic, moot court exercise can be closely related to the real cases where the participants have to be in the shoes of the lawyer, research, preparing written submissions and oral pleadings. These exercises can prepare students to work effectively in legal aid clinics. John T. Gaubatz argues that "the programs provide something which we in the classroom increasingly deny our students: the opportunity and the necessity to prepare and argue legal questions. It is a skill critical to lawyers, and its provisioning is an important part of their education."[33]

Often overlooked but moot court exercises are quite beneficial for academic learning. The "signature-pedagogy" by teaching students through case method has limitations as the

[33] John T. Gaubatz, *Moot Court in the modern Law School,* 31 JOURNAL OF LEGAL EDUCATION 87-107 (1981).

students do not learn the application of laws. It can be best understood when students try to apply the classroom learnings in the problems and understand it's working. Court-room mannerisms are best learnt in the moot court exercise.

Moot courts have become an important co-curricular activity and almost every law school is now organising a moot court competition. This has led to an increase in the opportunities for the students to appear for the competition, thus enabling more participation in the competitions. There are dedicated moot court societies in the national law schools which prepare students for these competitions. Students get access to the resources of the college and at times experts are also engaged by the law schools to help them with their preparation. This has not only helped the students but has also has provided an avenue for the alumni to contribute to their alma mater and stay connected with them. It is required for the law schools to encourage their students to take part in different moot court competitions and also facilitate them with financial and material resources to help them in preparing for it.

Moot courts have also become a place for showcasing one talent. These competitions have also started helping the students to fetch good internships. Some moot court offers internships at the top tier law firms and corporates; and can be utilised well leading to pre-placement offers from the recruiters. Moot courts also add up to the participant's resume giving one edge over the others.

**D. Teaching Drafting to Law Students**

A well-drafted plaint is the half work done for any lawyer. Legal drafting is the way through which any lawyer puts his/her first impression. It is the instrument of legal communication and the most important thing which every lawyer must be able to do

properly. A good lawyer must hone the skill of drafting and it is important for students whether opting for corporate or litigation. It is important to teach various drafting formats including pleadings, notices, applications, interim applications, adjournment applications, exemption applications, bail applications, etc. to list a few of them, which are usually required in the Court to be filed. The formats are an integral part of the drafting because poor drafting not only wastes the time of the registry but adversely affects the clients. It leads to unnecessary delays in getting justice.

The failure to properly train students for drafting increases the difficulties of the students at the internships and also after graduation. A legal professional understands that two situations cannot be the same. "A draftsman should always understand no two transactions are the same. The parties, their mindset, location, resources, expectations from a deal, governing laws, and all these elements are different in each transaction. The status of the parties (individual, LLP, company, NGO, government, etc.) may be different in different transactions, so their rights, obligations, expectations could be different. No one-size-fits-all works for corporate / commercial transactions. It is not only that you need to delete certain provisions of your precedents which do not apply to the present transaction, but you need to add several new elements which may be special requirements of the parties."[34]

Relying on old drafts too much may not take note of new enactments, repeals or amendments in statutory provisions. While working on a draft, one needs to take the updated position on all legal provisions applicable to the present transaction.

[34] Bhumesh Verma, *Legal Drafting Skills*, LINKEDIN, (2017) https://www.linkedin.com/pulse/legal-drafting-skills-bhumesh-verma (Last visited at Feb. 28, 2022).

Thus, drafting not only helps in writing but also improves the understanding of the law. In order to reply to notice or file a written statement, one needs to be aware of what and how to reply. If students are taught how to draft, they will also learn how to deconstruct the information and realise the shortcomings in the opponent's draft and reply to it.

Thus, the practical skill of advocacy is incomplete without the skill of drafting. With legal knowledge, it is important to teach how to use it in the drafts, without which the knowledge has no use.

**III. Conclusion**

The progress of a country depends upon the education imparted to the students. No one can deny the role and importance of law school in the overall development of a law student. The contribution of the lawyers in the freedom struggle and making of the Constitution of India is unmatched. A student of law has to be well versed not only with the law but also should be ready to practice law. The goal of legal education should not be limited to making students aware of the law and legal system but they should also be prepared to face real-life situations while practicing law in whichever manner they please.

The chapter is a humble attempt to throw some light on the importance of practical training in India. The adoption of clinical legal education has its own history and struggles. Clinical legal education encompasses important ways in which practical training can be given to law students. It is an effective pedagogy for teaching law. However, there are lots of issues with the proper functioning of clinical legal education. The authors have tried to give solutions to the issues which can help law schools in providing a better experience and learning opportunities to the students.

Bar Council of India, Consortium of National Law Schools and other universities need to actively put forward their concern and suggest solutions to the government so that legal education can be imparted in a much better and more fruitful manner. Lessons can be taken from the system of legal education in the US where teachers and students have opportunities of practicing advocacy before the court which helps students to get better practical training. There is also a need for the Bar Council of India to facilitate internships so that equal opportunities can be availed by the students irrespective of their background and location. The thirst and opportunities for improving legal education is never-ending and continuous endeavours should be made in this regard.

## Chapter - 7

# THE FUTURE OF LEGAL EDUCATION

*Krishan Mahajan**

## I. Introduction

India's legal education faces three fundamental problems: language, content relevance and the examination system. These perennial problems have existed now for over seventy years since independence, regardless of the myriad reports[1] and the changes in the duration of an LL.B course for a professional degree recognized by the Bar Council of India[2]. These three problems are perennial since these are not a part of the regulations of legal education by its sole statutory regulator, the Bar Council of India. There is no regulation which deals with the foundational inputs for determining the course of Indian legal education: culture, consumption, corruption, religion, politics and change to capture reality in probably the only knowledge subject in India's education system, which deals with Life, Action and Work or LAW.

* Former Professor, NLUO, Cuttack, RGNUL, Patiala, etc.

[1] 1917-1919, Calcutta University Commission to the 2009Report to the Supreme Court and Bar Council of India by the three-member committee constituted by the Supreme Court in BCI vs Bonnie FoI Law College, SLP22337/ (2008).

[2] S.7 of the Advocates Act, 1961 r/w Rule 2(xv) 2008 Education Rules for a Legal Education Committee of the Bar Council of India (BCI) under a retired Supreme Court judge Minimum Standards of Legal Education and BCI's power to inspect and derecognize LL.B degree for purposes of enrolment as an advocate, mandatory courses stipulated under the 2008 BCI Education Rules on Standards of Legal Education& Recognition of Degrees, April 2010 BCI Resolution to conduct an All India Exam , the passing of which alone will entitle an advocate to get a license from BCI or State Bar Councils to practice law by students graduating from the academic year 2009-2010,pursuant to the judgment in V. Sudheer vs BCI (1999)3 SCC 176.

The hope of a dynamic institutional framework for this purpose, in the BCI's Resolution 96/2009 for establishing a Directorate of Legal Education under Chapter IV of BCI's 2008 Rules, has not been realised, even after the sanction by it of Rs.50 lacs for establishing such a Directorate. BCI's opposition in 2012 to the Union Government's proposal to shift regulation of legal education to the National Commission on Higher Education & Research , ended the possibility of an institutional framework for a legal education that would effectively deal with its three problems to subserve the Directive Principles, which constitute the foundation of fundamental rights and both of which make the rest of the Constitution meaningful in terms of the preambular compass -justice social, economic and political[3]. However, as of today, the broad division of legal education since British times, into a mofussil system and a Presidency / metropolitan town system continues.[4]

**II. Language Inequality**

A broad marker of this socio-economic- political division of legal education in India, use English language and the judgments in English of the courts of U.S.A and England in the Supreme Court and the High Courts. English continues to be the recognized prime language of legal education, even though most of the students pursuing the LL.B. degree do not have the English language capability necessary for reading and understanding law. The majority of Indian students, who have never had an opportunity to learn English like the economically better off students, continue to be victims of the Macaulay class of Indians

[3] Under Art.37 of the Constitution of India the Directive Principles are fundamental in the social, economic and political governance of the country by implementing these on the basis of fundamental rights through enacted and administrative law.

[4] Union Education Ministry,2021, National Achievement Survey, calculated children's learning capacities in Class III, V, VIII and X. It found that rural areas and the constitutionally protected classes like SC/ST/OBC were educationally worse off than others.

controlling the making, teaching and practice of law as legislators, administrators, judges, lawyers and business persons.[5] The British colonial conquest of India was through ports, forts and courts by using the English language as the predominant and advantageous means of communication for all transactions to ensure law and order for an economy which systematically exported revenues from India to England.[6] The same language continues to be used today for delivering socio-economic -political justice from school upwards to a population, which except for the Macaulay class, does not know English or knows it in a manner to be of little use to it, socially, economically or politically.[7] Legal Education resting on school education suffers from historically embedded inequality in schools. After independence, this inequality is continued as political governance based on unconstitutional economics[8].

## III. British Aim & Design

The British needed law knowing administrators for drafting commercial contracts of properties and commerce. For dispute settlement they needed lawyers and judges who could draft and speak in English, for the functioning of the Supreme Courts in the

[5] Lord Macaulay, Law Member in the Viceroy's Council, presented to the British Parliament on Feb 2, 1835, the Minute of Education to shape the culture of education in India. According to this Minute the British governance should produce Indians, who are Indian in blood and colour but have the language, intellect and morals of the British. This was followed by Charles Wood's Despatch prescribing English as the compulsory medium for such education.

[6] RAJENDRA PRASAD, COLONIAL, LUMPENISATION & REVOLUTION 1 (Ajanta Books International, Delhi 1995).

[7] Union Education Ministry, Annual Status of Education Reports, on English Assessment in schools, 2007,2009,2012 and 2014; Chapter 2 of the 2011 report, Inside Primary Schools, Rural, found at p.12 that even in the best performing State, Himachal Pradesh, only about a third of all children at the beginning of Standard 3 can comfortably read the Standard 1 textbook. At p. 14: The children's ability to correctly formulate and write sentences on their own was exceedingly low even in Std.4.At p.17: Many of the children are unused to applying their knowledge to problem solving.

[8] BAXI UPENDRA, Chapter XXI, LAW AND POVERTY: CRITICAL ESSAYS, Publisher: N.M. Tripathi, 1988, Bombay.

Presidencies of Calcutta, Bombay and Madras, and then the civil courts in Bengal, Bihar and Orissa as also the high courts in the Presidencies. So, the British -India legal frame of governance, determined the aim and design of legal education in English, beginning with a two-year course taught in English by the lecture method under the 1774 Charter and Bengal Regulation VII of 1793 to introduce legal education in English in the Presidency Universities. This was followed by the 1865 Letters Patent Appeal empowering Calcutta high court to approve and enroll advocates as also the Mughal era vakils and pleaders, the 1846 Legal Practitioners Act and the 1926 Bar Councils Act. The continuation of this British colonial language, economic design and aim of legal education in India was ensured by Articles 372, 367, 374-376, 313, 312(2) and 348 of the Constitution of India, to continue the same economic cum legal structure through Indian citizens struggling for the social, economic and political justice of the Constitution in local languages under a framework of governance in the English language.

**IV. Aspiration & Pain**

Legal education is today imparted through four institutional formats: National Law Universities, State Universities having their own departments, faculty or colleges of law, deemed universities owned mainly by private entities and private colleges affiliated to a State university. With the immense increase in legislative and administrative power of the ruling politicians, their civil cum combat administrators and of judicial power over people and resources of the country, the LL.B. degree has become the aspirational route to livelihood, power and money. For the majority of law students, the target is to obtain the LL.B. degree regardless of the language or content in the three year or the five-year law course. The inequality of India from school education is perpetuated in varying degrees, in the LL.B. degree course in the four institutional formats. One does not hear of any

move by the Bar Council of India or a joint move by State Bar Councils to recognize this perpetuation of inequality and require steps to deal with the English language problem of most of the law students in the country who were victims of inequality in school education. Most law students today receive legal education in non-English language through non- English law books or English help books. Even in some National Law Universities the efforts of Vice Chancellors to eradicate help books from the library have been in vain. The lack of English language ability, the absence of content relevant to the existing culture and life as also the examination system in this context reduces legal education to a degree fetching exercise, for most of the law students.

This English language pain in law has given rise to a serious distortion in legal education--- legal education institutions which require attendance of law students and those which do not. A large number of legal education institutions today give law degrees to those law students who pass the law exams and get a degree without having attended any or only a token number of law classes. A large number of staffers of the Supreme Court registry are beneficiaries of this process of legal education, since they simply cannot attend classes as the whole day they are working in the Supreme Court. But the Supreme court recognizes their LL.B. degree to grant promotions and increments on its basis. There is a mutual financial benefit from this process for the students and the private legal education institutions recognized by the Bar Council. The students get a law degree with minimal expense, which gives them a status in marriage, increments at their work place and eligibility to sit for various exams or apply for various government and private jobs. The legal education institution gets easy money without the need for infrastructure, contingent of the requisite teaching staff and employees and the headache of managing all this. This has bred severe competition for students between these private institutions. It has spawned a whole professional class of student recruiters on a lump sum or

per student basis. Today, these recruiters occupy positions in such legal education institutions with salaries and influence wholly disproportionate to their education. Since the five-year law course starts with the 10+2 results of schools, the recruitment process now extends to schools, especially the new breed of "global schools" which charge astronomical fees for the advertised "global" opportunities. Such is the fear of students failing and leaving that well-meaning vice chancellors and deans are subject to standards determined by these students and recruiters. This only increases inequality by birth and resources, resulting in the legal education system itself making the national parameter of social and consequent economic and political justice more distant even among the formally educated students.

**V. Why Language**

Unlike other professional disciplines, the only instrument of law is language. A doctor, an engineer, a chartered accountant and scientists have a whole bouquet of instruments to understand the subject they are dealing with. This is not the case with law for two reasons. Firstly, law deals with the whole of life. This is self-evident from the subjects of governance in India mentioned in the Union, State and Concurrent Lists in the Seventh Schedule of the Constitution of India, the definition of law in Article 13, Fundamental duties, rights and directive principles and the provisions on contracts and finance in the Constitution with the holistic words in the preamble--- justice, social, economic and political. In short there is no area of personal, professional, public or private life which does not fall in the realm of legal education and law. But the operational statutes and judgments in the administration and the courts are in English, which remains the predominant legal language. The reason for this predominance arises from the Constitution itself.

## VI. Lawyers, Judges and Translation Jobs

The technology of simultaneous translation has been available for the last many years. But Governments, Bar Associations, Bar Council of India, State Bar Councils and the judiciary, have not pushed for the installation of such citizen friendly technology in the courts and administration. This and a programme of translation into State languages accompanied by a country wide training of translators of law, would diminish the pain of thousands of law students and law teachers being taught law in non- English languages in institutions of legal education recognized by the Bar Council of India. It would also meet the shortage of official translators in the courts. A national and State level legal translation programme would create jobs and be an employment multiplier for law students and lawyers. It would join legal education to courts, administrations, mediation, arbitration and conciliation to enable socio-economic justice in law. There is obviously no pressure from the relatively privileged English language legal education students and lawyers as this would tremendously increase competition for entry to the myriad avenues open to a law degree holder for a livelihood and make law understandable to citizens in every State. The judiciary apparently does not recognize this problem of language in legal education which deprives most law students of legal knowledge and equal opportunities based on such knowledge in the legal profession, administration and jobs based on law. The English language creates a protected economic turf for the lawyers educated in English. It is because of this that legal education today builds cumulative incremental inequality, especially in the courts. This is despite the constitutional judiciary, serving or retired, being actively associated with legal education in all the four formats of legal education.

**VII. Legal Information Jobs**

The Union and State governments publicly funded information and public relations services keep the citizen and the litigant uninformed about laws and court processes. The judiciary does nothing in court administration to inform even the constitutionally protected class of litigants so as to ease their business in the courts. The effective steps taken towards this ease of doing legal business do not form a criterion for marking the quality of a judge or a lawyer. There is hardly any bar association or bar council which has a citizen legal education programme generally, or especially for litigants attending the courts. Legal education even in the best of law schools generally shuts out this reality to the extent that there is not even a theoretical paper on Legal Information to turn law into a useful information product or on Courts and the Litigation Process or on Citizen and the Administrative Process to create jobs for law students and lawyers in court management and litigation processes. The law teacher has to face the students who in their third or fourth year proudly announce that they will not be visiting the law school, college or university since they have got jobs as police constables and now all that they have to do is to earn and earn. A whole class of financially wise, moonlighting law teachers gets created to mock the dedicated law teacher. The Bar Council of India's mandatory attendance percentage is seen as a hostile regulation that must be shown paper compliance to enable the students to sit in the exam. Ironically the ERP system of attendance marking has created master class of this computer system among teachers and administrators of such legal education institutions, to ensure semester / year-end compliance with BCI rules on attendance. Of course, they do not get paid for this work which has nothing to do with teaching or teaching administration, even as the business person turned educationist or vice versa enjoys all the taxation benefits of running an institution of higher education.

## VIII. Examination System: Absentee Students

This existential system of legal education, especially in the private sector (save for some exceptions), is anchored by an examination system in which the student can go on giving exam after exam against a fee payment till s/he runs out of the limit of exams that can be given, the money for these or both. The exam system cannot fail the legal education model mutually beneficial to the student, the teacher, the administrators and the owner/investor. High powered advertising, marketing and the business techniques of generating profit for the owner/investor mark a significant portion of legal education today. Until and unless this is discussed in a forthright manner to work out solution pathways, legal education will remain largely irrelevant to most lawyers who still harbour the memory of an exceptional law teacher in their lives. Accordingly, from the Supreme Court downwards it is better to get the law degree by being an absentee student and use the absenteeism to work for five years for learning the registry and operational methods in court/client management, so that by the time a degree is conferred such student is ready to straightaway practice, on terrain he is already familiar with in terms of file cum monetary management. What legal education should have done is achieved by a law student by being absent from legal education because of legal education institutions which ensure him a law degree recognized by the Bar Council of India. No legal education report till today has dealt with this harsh reality.[9] Similarly, these reports have not dealt

[9] 1948-49, Bombay Legal Education Committee report; 1951, All India Bar Committee Recommendations ; 1954: 14th Law Commission Report; 1955, Rajasthan Legal Education Committee report; 1988-90 , Curriculum Development Centre , UGC, Report; 1993-94, Fifteenth Report of the Parliamentary Committee on Subordinate Legislation, Chapters VI and VII; 1994: Justice (as he then was) A.M. Ahmadi Committee Report; 2001: UGC's Curriculum Development Report, UGC's Model Curriculum; November 2002:Recommendations of the First National Consultative Conference of Heads of Legal Education Institutions at NLSUI, Bangalore; Dec.2002: 184th Law Commission Report and the 2007 National Knowledge Commission Report.

with the stark fact that the law which is mastered in a few days by handling a live court case takes months to be taught in a legal education institution. The legal profession poses an efficiency of law learning time challenge, which though known, remains unaddressed. This has a direct impact on the economics or cost of legal education, which is negated completely by the awarding to absentee students law degrees recognized by BCI. This leaves legal education institutions with no value by themselves.

## IX. Maths and Computer Languages

As in other fields of knowledge, change is incessant in law.[10] But unlike technology, it is not a change driven from within itself. It is change demanded by development in all other fields of human activity and thought on which law acts to regulate the most difficult part of human being behaviour. But this activity of change is substituting human language itself.[11] The new languages are those of physics, mathematics and computers. If legal education does not equip a student to understand the transformation of heart beats into the various graphs produced by various machines doing various cardiology tests, there is little that the law student can do in terms of regulation of cardiac medical practice. The skill to read machine data is a necessity for legal education to regulate the world of bioengineering, artificial intelligence, robotics and data capturing, and its conversion or output, which is based entirely on the use of mathematics in a specific computer language used by an individual or an organization. The world of natural organic growth of humans and nature is moving to the manufacture of customized humans and

[10] PEDRO DOMINGOS, THE MASTER ALGORITHM, 2015, Pbd by Basic Books, N.Y, U.S.A. Society is changing, one learning algorithm at a time. Machine learning is remaking science, technology, business, politics and war

[11] CHAOS, JAMES GLEICK, SPHERE BOOKS Ltd, London, REPRINT (1991) p.6: Chaos is the third component of twentieth century science after relativity and quantum mechanics. How many of us can understand its language like fractals, bifurcations, intermittencies and periodicities, folded towel diffeomorphisms and smooth noodle maps.

nature. Automation and speed are the drivers of that eternal human attraction- money, digital or otherwise. But the fundamental legal concepts of free will, voluntariness, responsibility, accountability, liability and civil or criminal punishment in this world of faceless transactions (will be operable only by a law person who understands science, mathematics and computer languages. One is yet to hear of a movement in legal education on the need to ensure the knowledge of these new languages which render English or any other word language meaningless for tracking and regulation. If human desire, will, choice and consequent action are collected, stored in electronic circuits and retrieved as machined data[12], then word data is useless. Even if it is converted to word data its authenticity depends on the integrity of the machine data which has been converted to word data and the integrity in turn depends on the manner of use of the mathematical and computer language for such data.

It is a question of imagining the future of legal education today to start the work of ensuring its relevance in a fast-changing world heading to brain to brain communication to probably culminate in an inter brain net. The Bar Council of India, the UGC, the Union Law Ministry or the NITI Aayog, collectively, need to map out the course of legal education till at least 2050. But then legal academe need not wait for this official machinery to wake up and work. It can lead by transforming its own resources and the content of existing mandatory and optional or credit subjects by organizing teaching which will link them to jobs by sharing this work with the relevant units in the country, producing such jobs.

[12] Science in the course of the few centuries of its history, has undergone an internal development which appears to be not yet completed One may sum up this development as the passage from contemplation to manipulation: RUSSELL BERTRAND, THE SCIENTIFIC OUTLOOK 269 (Unwin Brothers Ltd, Woking, Great Britain 1931).

## X. Legal Education Sewa Centres

A few universities are offering now five year courses only in B.Tech Law. Pharmacy degree courses have some elements of drug laws. But one is yet to hear of a course on bio engineering and law even though the world has been made abundantly aware that the four billion year old path of Darwinian natural selection is heading to being replaced by all or any of the following: bio engineering, cyborg engineering or the engineering of organic life.[13] The judiciary is busy dealing with its problems of digitizing court records into electronic words and serious connectivity problems of its online connections. Can India be a future leader of a rule-based world, without a critical mass of law persons trained in mathematics and computer languages with ability to understand and interpret machine data collected and sifted from existing data on culture, custom, religion, corruption and change in agriculture, industry and services, by legal education centres acting as Legal Sewa Centres at least for the neighbourhood areas where such centres are located. A law student relevant to the imminent emerging world can be produced only by first equipping such students with the relevant language of mathematics, physics, bio and computers. In doing this legal education makes itself relevant both to change and the new livelihoods emerging from such change.

## XI. The Knowledge Leap Required

A quick view of the content of some of the subjects that are taught for the LL.B. degree and of subjects that are not prescribed, shows the distance to be covered for a legal education that is meaningful for the life of the law students in terms of keeping themselves abreast of change for a livelihood through law. There is nothing in the Bar Council of India Act and rules or in any other

[13] *Ibid.,* Harrara Yuval Noah, 448,456 (2011)

law which prohibits or stops law teachers and vice chancellors from making the existing prescribed courses socially, economically and politically relevant.

**A. Constitutional law**

Constitutional law teaching across the legal education centres does not generally refer to the crucial missing words in our Constitution: political parties, poverty, health, environment, infrastructure, livelihood, markets and information in the Chapter on Fundamental Rights and its impact on equality, justice social, economic and political. In the absence of such knowledge production and assimilation, Constitutional law teaching has become a mere collection of Articles of the Constitution and the Supreme Court judgments under these. This leaves no juice in the constitutional language and the students complain of the subject being difficult, boring and tasteless. The debate on competition between political parties, to promise schemes under the Directive Principles based on public funds, at or near an election, escapes law teaching. Consequently, there is no research work comparing the election manifestoes of contesting political parties in the context of the Directive Principles, fundamental rights and Supreme Court judgments on constitutionalism, constitutional morality and the constitutional spirit.

Today, constitutional law teaching does not refer to custom and the cultures of 'sections of citizens' which constitute the heartbeat of India from birth to death. It also does not refer to the role of advertising as part of Art 19(1) ((a) in altering the customary and cultural behaviour of consumption, which determines what is produced, priced and marketed, and how consumption determines the revenue and business laws without any reference whatsoever on the effect of the advertised products on environment and health. There is no exploration into how unconstitutional economics since independence has turned the

preambular socio-economic and political justice on its head to turn markets against the citizen, how the social has been split apart from and taken out of economic and political justice in one law after the other including the annual financial statement or budget and how directive principles declared to be fundamental in the governance of the country have been silently defeated by the legal system itself .

The political control over people and resources is not examined across the general pattern of law making under the Constitution, to show how Parliament has been empowering ruling politicians by putting them on the bodies created under the laws and granting them discretion concerning important provisions of these laws. Consequently, how markets are created and worked through laws under the Constitution finds no mention in constitutional law teaching. Added to this misery is the absence of any course on law as an agent for the creation, use and regulation of markets in the context of constitutional goals. Law teaching puts the fate of Homo Sapiens[14], in the world's second most populous country, on such a constitutional stake. The opportunity is lost of using law teaching as a vehicle of the constitutional logic to understand and affix socio-economic and political responsibility.

**B. Jurisprudence**

This lost opportunity in the teaching of the prescribed course of Constitution, does not spill over into the teaching of the prescribed course of Jurisprudence, concerning power, its control over people and resources, the continuous denial of the right to be informed by those in power of the share of sections of people in the national wealth and who bears the costs of its production and the responsibility for its environmental consequences. Such

[14] Harari Yuval Noah, HOMO SAPIENS (Vintage, U.K. 2015)

teaching does not ask the question as to why and how slums get created for half of the urban population and exist in a planned economy wherein all having the power to rule, hold their office under an oath of upholding the Constitution, with no consequence when official documentation itself shows the oath being regularly breached in critical areas of socio-economic justice by designing unconstitutional economics[15] as the rule of law. Legislative and executive law making proceed, like advertising, without informing the impact of the proposed law on environment, health and security by marking the numbers likely to be affected by that law. One has yet to hear from legal academe, the Bar Associations and Councils, or the judiciary the demand for a directive principles impact statement and a fundamental rights impact statement in each session of the constitutional units of governance- gram sabhas, panchayats autonomous councils, State & Union Governments to the national development symbol called slums.

All this does not enter into the teaching of Jurisprudence concerning power, public or private, its control over people and resources, the continuous denial of the right to be informed of the share of the constitutionally protected sections of people to public goods in the national wealth. Economics, taught as a standalone subject in the first or second year like political science and history, does not raise the curiosity of constitutional law teaching in the role of power in sub silentio manufacturing unconstitutional economics to deprive the many and impose on them unknown health costs of polluted air, water, soil and slums for the production of goods they do not consume in markets wherein they cannot enter for the lack of purchasing power. Constitutional law teaching, political science, economics and sociology in legal education centres does not ask as to how and why this happened

[15] Mahajan K, Legally Victimizing National Monuments, Chapter 3, 56 NOTION PRESS, Chennai (2018).

in a planned economy through a Planning Commission, under the Constitution till 2014, and continues, since then under the strategies of the National Institution for Transforming India (NITI Aayog). Jurisprudence teaching normally ends up as a collection of the foreign schools of jurisprudence without the essential social, economic and political history in which these schools were born. In short, law teaching misses the government schemes and reports on the manipulation under the Constitution and the contemplation of such manipulation in Jurisprudence.

**C. Constitutional Law Leadership**

Constitutional Law teaching is the cutting cerebral edge of life and law in India. But that edge has not been used to enable even those around the legal education centres to know and receive its promise of socio-economic justice by turning power and resources to this purpose by designing markets and information systems that will deliver this. Constitutional law academe has always had the opportunity to plan, propose and execute studies on the cultures of consumption of all sections of Indian citizens by launching in legal education centres research work on the compilation of such cultures and their effects on environment and health. This would necessarily be an inter-disciplinary movement. It would create: a) thousands of jobs in the districts; b) quantify the environment and health benefit of such consumption and use of local resources ; c) make citizens aware of the benefits of their customary products; d) promote unbranded economically efficient consumption at an affordable price against the mindless consumption of the branded goods; e) promote fair small markets against the huge aggregating markets of supply lines, logistics and non-responsive customer care and e) invest in relevant science and quantification in the customary markets.

What is needed is the courage to break away from the traditional constitutional law teaching and turn it into a catalyst

for coping with change while rooted in scientifically verified custom and culture or way of life. It needs imagining the legal education centre as a Legal Sewa Centre which will not be happy with mere white boards that print out what is spoken in the class, marker pens with harmful ink, audio visual equipment, food which has nothing to do with the local way of life and the teaching of accountancy as also management including marketing, as faceless subjects free of the Constitution and therefore harmful.

Today constitutional law teaching is needed to pinpoint the assumptions of economics, science and technology which are neither taught nor usually discussed. Yet it is these assumptions which silently harm citizens and persons when combined with power to create markets for a few that will impose the environment, health and medical costs on the many. This leadership seems to be missing.

**D. Administrative Law**

Constitutional law and administrative law are coeval. While India is governed by statutory[16] and largely through executive[17] law on the subjects mentioned in the three lists of Schedule VII of the Constitution, its actual administration takes place under the Allocation and Transaction of Business Rules. The most crucial Ministry for the creation, collection and disbursement of national wealth is the Finance Ministry and the public and private financial markets. But usually neither constitutional law nor administrative law teaching enters these areas. Legal Aid that which is publicly funded through the judiciary and some privately, could enter this area and that of criminal law under the Union Home Ministry, to serve the public interest with its outreach to citizens from the taluka to the metropolitan city. Legal Aid Clinics

[16] *Art.* 245-260
[17] *Art.* 73 and 162

in legal education centres could be converted from their present state to live units to create law students and teachers relevant to the reality of India.

But there is no push at all towards being relevant for preparing relevant law persons as the entire assessment structure of legal education from Ministry of Education, UGC, NAAC and the judiciary associated with National Law Universities, is not geared for this purpose either in terms of production of knowledge for legal education or the training of personnel for creating and using such knowledge.

**XII. Legal Data Production Centres**

The Centres of Excellence in various fields of law cannot be created without a dedicated infrastructure for knowledge production on the touchstone of socio-economic and political justice taking into account the production of knowledge at the international and national levels of administration. Each legal education centre needs to have its own subject wise knowledge clearing and generation unit. Till then constitutional social justice will remain a residual component of the integrated socio-economic and political justice with economic and political justice going one way and social justice another way. It is like discussing the issue of marital rape or reproductive rights and the age of marriage without any reference to what is happening to the age of puberty or sexual desire in the context of better food availability and awareness. Maybe this explains why corruption law does not form part of papers on contract, securities, banking, financial, administrative and local government.

**XIII. Courses Not Prescribed**

It is well known that we are an agriculture dominant country. Yet even today we do not have an agricultural law

prescribed compulsory teaching programme, though agriculture is the socio economic and political justice lifeline.[18] A full semester programme designed and executed on Health Law by the author at a private University's school of law died after that semester. At another private university, the designing of an Interpretation of Statutes based on Supreme Court judgments, had to be terminated due to severe limitations of the students in the English language and their knowledge of law, due to the "fear" that they would fail and the "fear" of the administration of students quitting the University.

By ignoring agriculture law, we ignore the teaching of the fundamental right to culture in Art. 29 of "sections of people" in India. The potential of Art. 29 to rationally conclude that there are no minorities but only cultural minorities with their language, script and culture, is wasted. This potential could end the perennial problem of minority and majority that bedevils the country. But this requires a legal education centre to act as the Sewa Centre for the local population and map the local cultures or ways of living and languages by field studies as part of the legal education in each subject of law. The advent of the teaching of subjects like sociology, history, political science by hiring non- law teachers seems to have given rise to the notion that these areas of knowledge are not of any concern for the law teacher. This notion works as a deprivation of relevant knowledge for a law subject. This is contrary to the trend in professional legal practice where the lawyer collects all relevant facts, regardless of the knowledge discipline, for preparing a case. Experts in specific areas of engineering, equipment, risk management or finance brief the lawyer leaving it to the lawyer as to how to use the inputs given to him. This Art 29 richness of India awaits a legal hand to shape a unique legal education.

[18] The author designed an agricultural law paper while being the Dean at the National Law University, Odisha. The programme was approved by the academic and the executive councils. But it was never executed. Similarly, a Law and Religion programme designed and executed at the LL.M level simply faded away after a year.

**XIV. Religion and Law**

Legal Education Centres as Legal Sewa Centres promise a revolution in the meaning of law in collaboration with the people on whom the law is to be made applicable. It holds the promise of bringing reality into the teaching of business, financial, tax, administrative, family, property, dispute resolution, regulation, of making law students ready for the jobs in the use of these laws and the challenge of recreating markets towards justice socio economic and political. This should be the measure of excellence in law, leading ultimately to a unique socio economic and political based on field studies of the local in reference to the bigger legal units till the jurisprudence international.

**XV. The Cultural Census Juice**

Out of the prescribed subjects constitutional law and jurisprudence are crucial to understand manipulation of law and its contemplation, in all other prescribed subjects. Constitutional law teaching across the legal education centres, recognized by the Bar Council of India, does not generally refer to the crucial missing words in our Constitution: poverty, health, environment, infrastructure, livelihood, markets and information in the Chapter on Fundamental Rights and its impact on equality, justice social, economic and political. In the absence of such knowledge production and assimilation, constitutional law teaching has become a mere collection of Articles and the Supreme Court judgments under these. This leaves no juice in the constitutional language and the students complain of the subject being difficult, boring and tasteless. There is no exploration into how unconstitutional economics since independence has turned the preambular socio-economic and political justice on its head to turn markets against the citizen, how the social has been split apart from and taken out of economic and political justice in one law after the other including the annual financial statement or budget and

how directive principles declared to be fundamental in the governance of the country have been silently defeated by the legal system itself even as politics sets a competition of promises under directive principles. The political economy rarely finds a place in constitutional law teaching just as custom and culture do not, (Articles 13(3)(a) and 29), even though these are the historical transformation engines of India. A whole debate awaits on the question whether India is a land of cultural minorities under Art.29 which subsumes religious and linguistic minorities? Country wide jobs await creation for the legal mapping necessary under Art. 29. Legal academe and its assessment structures can innovate to create a unique cultural census[19] for use in economic policy, allocation of public monies, law making and politics.

## XVI. Impact Statements

Legislative and executive law-making proceeds, like advertising, without informing the impact of the proposed law on environment, health and security by marking the numbers likely to be affected by that law. It is also usually silent about effective enforcement and the money for this purpose. One has yet to hear from legal academe, the Bar Associations and Councils, or the judiciary the demand for a directive principles impact statement and a fundamental rights impact statement in each session of the constitutional units of governance- gram sabhas, autonomous councils, manifestation into the national development symbol called slums. Constitutional law teaching does not panchayats, municipalities, district administrations, State and Union Governments. Constitutional law and administrative law are coeval. While India is governed by statutory law[20] and largely by executive law[21] on the subjects mentioned in the three lists of

[19] Mahajan K., *Legally Victimising National Monuments: Role of Parliament, Union Govt. and Supreme Court*, Chapters III and V, NOTION PRESS, Chennai (2018).
[20] *Art.* 245,246
[21] *Art.* 73,162

Schedule VII of the Constitution, its actual administration takes place under the Allocation and Transaction of Business Rules.[22] The most crucial Ministry for the creation, collection and disbursement of national wealth is the Finance Ministry, the RBI and the public and private financial markets. But usually neither constitutional law nor administrative law teaching enters these areas.

There is no push towards being relevant for preparing relevant law persons as the entire assessment structure of legal education from Ministry of Human Resource Development, UGC, NAAC, the judges associated with legal education, is not geared for this purpose either in terms of production of knowledge for legal education or the training of personnel for creating and using such knowledge.

## XVII. Legal Knowledge Production Centres

Centres of Excellence in various fields of law cannot be created without a dedicated infrastructure for knowledge production on the touchstone of socio-economic and political justice taking into account the production of knowledge at the international, national and other units of national administration. Each legal education centre needs to have its own subject wise knowledge clearing and generation unit. Till then constitutional social justice will remain a residual component of the integrated socio-economic and political justice with economic and political justice going one way and social justice another way. It is like discussing the issue of marital rape or reproductive rights and the age of marriage without any reference to what is happening to the age of puberty or sexual desire in the context of better food availability and awareness. Maybe this explains why corruption law

[22] *Art.*77(3), 166(3)

does not form part of contract, securities, banking, financial, administrative and local government law teaching.

There is a dire need to go beyond IPC and CrPC in the teaching of criminal law by associating it with police structures, financial intelligence and international agreements on criminality with a spillover into the contemplation of criminality in the teaching of Jurisprudence.

**XVIII. Virgin Areas of Legal Innocence**

It is well known that we are an agriculture dominant country. Yet even today we do not have an agricultural law programme, though agriculture is the socio economic and political justice lifeline.[23] The programme was approved by the academic and the executive councils. But it was never executed. Similarly, a Law and Religion programme[24] designed and executed at the LL.M. level simply faded away after a year. A full semester programme designed and executed by the author on Health Law as a Dean at the private K. R. Manglam University School of law died after that semester upon the author leaving the institution. By ignoring agriculture law, we ignore the teaching of the fundamental right to culture in Art.29 of "sections of people" in India. The potential of Art. 29 to rationally conclude that there are no minorities but only cultural minorities with their language, script and culture, is wasted. This potential could end the perennial problem of minority and majority that bedevils the country. But this requires a legal education centre to act as the sewa centre for the local population and map the local cultures or ways of living and languages by field studies as part of the legal education in each subject of law. The advent of the teaching of subjects like sociology, history, political

[23] The author, as the Founder Director on Agricultural Law, designed an agricultural law course, while being the Dean at the National Law University, Odisha.

[24] Kitty Ferguson, *The Fire in the Equations*, Chapter V p. 143, THE ELUSIVE MIND OF GOD, (Bantam Press, Great Britain 1994).

science by hiring non- law teachers seems to have given rise to the notion that these areas of knowledge are not of concern for the law teacher. This notion works as a deprivation of relevant knowledge for a law subject. This is contrary to the trend in professional legal practice where the lawyer collects all relevant facts, regardless of the knowledge discipline, for preparing a case. Experts in specific areas relevant to the case brief the lawyer leaving it to him as to how to use the inputs given to him. This interdisciplinary richness of India in the legal profession, awaits legal academe to shape a unique legal education.

Legal education today is quite far off from the key policy and debate on development. It generally does not have a paper on Development Law[25], Law of Markets[26] and the Law of Regulation of Industry, Agriculture and Services or of Infrastructure[27]. Each of these holds vast potential of jobs for law graduates and Ph.D. law scholars. But to give economic meaning to these courses necessitates extensive collaboration with government agencies and the relevant persons in the public and private sectors at the national and international level. There is a compelling need to create sustainable structures within legal education centres which can enable such relevant legal education. This has to be accompanied by configuring relevant parameters of assessment of the teachers and administrators of legal education who are generally comfortable cranking the old machinery of creeping change after vast changes have already taken place. Legal education should be a joy and not an economic pain. Interconnected legal knowledge production or Sewa Centres could

[25] Critical sectors of development under GOI's 2018 programme anchored by NITI Aayog and monitored by the Prime Minister, for India's most backward or aspirational districts: health care, education, agriculture and water resources, financial inclusion, skill development and basic infrastructure. Since many of these are Naxalite areas, a question arises about securing development by violence

[26] commodities, services and finance

[27] Roads, railways, ports, power, data centres and drones

then be a legal brains internet debating the law of everything along with the debate on the Science of Everything.[28]

## XIX. A Legal Education Revolution

Legal Education Centres as Legal Sewa Centres promise a revolution in the meaning of law in collaboration with the people who are innovating and with those on whom the law is to be made applicable. It holds the promise of bringing reality into the teaching of law and of making law students ready for the jobs in the use of these laws and the challenge of recreating markets towards justice socio economic and political by discovering the legal balance among the creators and users of markets This should be the measure of excellence in law the evidence based struggle in finding the balance by rationally testing the assumptions of various knowledge areas, which the law must necessarily deal with. Legal equations must have their place among those of science and economics even as life is rolled into the God called algorithm and turned into an eco-science surveillance rendering meaningless the notions of being human and autonomy of human thought and action.[29] The creation in law teaching of such legal equations should be the measure of excellence in law, leading ultimately to a unique socio-economic and political woven out of field studies of the local in reference to the bigger legal units till the international. This is the card of joyful work available only to legal academics in India. It is time to encash it.

[28] KITTY FERGUSON, BANTAM BOOKS, STEPHEN HAWKING ON THE QUEST OF A THEORY FOR EVERYTHING (1991) & STEPHEN HAWKING, BRIEF ANSWERS TO BIG QUESTIONS (Publisher John Murray, U.K 2020).

[29] ZUBOFF SHOSHANA, PROFILE BOOKS, London (2019).

## Chapter - 8

# OUTCOME-BASED APPROACH AND PROFESSIONAL LEGAL EDUCATION: GAPS AND OPPORTUNITIES

*Sandhya Kumari**
*Priyanka Sharma Khanduja***

## I. Introduction

The present times may be called 'The Age of Human Capital'[1] as how a country's human resources are developed and utilised to determine its standard of living and performance across development indices. For this reason, education becomes a crucial factor in a nation's productivity. This cause, coupled with reports across the disciplines from the industry stakeholders about a skill gap in education, forces a contemplative stance in higher education. As per the India Skills report 2022, India's employability is pegged at 46.2%[2]. Dell Technologies predicted that about 85% of the total jobs in year 2030 have not been invented yet, and impressed upon inculcating the ability to learn[3]. Deloitte Report, 2016 has underlined the need for the legal fraternity to rethink strategy to respond to changing market needs, evolving talent needs (like, flexible work schedules, broader

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1 Gary S Becker, *The Age of Human Capital*, EDUCATION IN TWENTY-FIRST CENTURY (2002).

2 Wheebox, INDIA SKILLS REPORT, URL: https://wheebox.com/india-skills-report.htm (2022), (Last Visited on 20 March 20 2022).

3 Institute for the future & Dell Technologies, *Emerging Technologies' Impact on Society and Work in 2030*, (2017), www.iftf.org (Last Visited on 20 March 2022)

skillset etc.) and a general shift in skills and expectations[4]. Reports have highlighted the need for three-way collaboration between policymakers, industry and academia and a commitment to make higher education skill-based and learner-focused[5]. Professional legal education institutions need to revisit their practices for their graduates to be able to compete and thrive in this ever-changing market.

The current education system, by and large, is teacher-oriented and process-centric. The general process involves exposing the students to the curriculum over a while, then subjecting them to an exam and grading at the end. This process also assumes that everyone who passes the exam has learnt what they were supposed to. This approach has certain drawbacks; firstly, this process does not define what is supposed to be learnt or acquired during the course making it open to interpretation by the individual student and teacher. Secondly, because of undefined goals, the measurement of learning cannot be precise, leading to the falsification of the assumption that clearing the exam is proof of learning. Thirdly, this system puts undue importance on performance on exams and tests rather than the goal of learning and skill acquisition. Finally, there is no process of feedback in the system to check for its efficiency. By chance, if it is, it is only for doing lip service rather than acting on the same. Legal education also follows the same process by and large.

It creates a need for a well-defined and systematised approach to higher education that clearly states what is needed for all students to be able to do after completing their course. Outcome-based education (OBE) has emerged as one of the solutions to the shortcomings of the current educational approach. It is learner-oriented and goal centric. It also addresses

4 Deloitte Professional, *Developing legal talent Stepping into the future law firm* (2016).

5 *Supra* note 2.

the need of the current graduates to have skills necessary for employment in addition to theoretical knowledge.

Learning outcomes move the focus of education from teaching to learning, skilling to thinking and from content delivery to enabling the student to make student ready for the 'market'[6]. OBE emphasises what the learner should be able to achieve at the end of the learning process, what they would know and understand, and what they would be able to do towards the end of the program or afterwards. OBE highlights the outcome, where the student learning is measurable, verifiable and can be enhanced. It has led to innovation and organisation of teaching methods. One of the more attractive features of OBE is the idea of accountability which led to quick adoption across the globe.

Defining education in terms of learning outcomes shifts the focus from the teacher to the student and from the lesson's content to the lesson's outcome. The shift in focus promotes transparency and accountability in higher education towards stakeholders like the students, their parents, and their employers as the outcomes of the process are clearly defined. As per Spady, "An outcome-based education is a culminating demonstration of learning. It is a demonstration of learning that occurs at the end of a learning experience. An outcome is the result of learning which a visible and observable demonstration of three things is: knowledge, combined with competence, combined with orientations".[7] It is not a panacea but a transformational way of doing education as a business.

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[6] Duradundi S. B. & Mudgal D., *An Outcome-Based Education (OBE): An Overview*, 4 INTERNATIONAL JOURNAL OF ADVANCED RESEARCH IN EDUCATION & TECHNOLOGY (IJARET) 1 (2017).

[7] WILLIAM G. SPADY, OUTCOME-BASED EDUCATION: CRITICAL ISSUES AND ANSWERS (1994).

In this backdrop, the chapter aims to acquaint the reader with the paradigm of OBE and how professional legal education can benefit from an alignment with OBE principles. It seeks to understand gaps and opportunities in professional legal education and how OBE can help in supplementing those. The chapter has four sections. The first section talks about the basic concepts of OBE, its framework, Bloom's taxonomy, and steps in planning a course according to OBE models. It draws on research from educational and cognitive psychology to help readers understand the process of teaching and learning and best practices in OBE. The second section talks about how OBE came to be adopted in higher education in general and legal education in particular. The third section talks about the gaps and opportunities for OBE in legal education and a way forward. The concluding section proposes some recommendations about the role of OBE in legal education.

## II. Outcome-Based Education

Outcome-based education is a student-centered teaching and learning model in which course curriculum, instruction and assessment are planned according to pre-defined objectives and outcomes. William Spady, one of the leading proponents of the outcome-based approach defines OBE as "a comprehensive approach to organising and operating an education system that is focused on and defined by the successful demonstrations of learning sought from each student. Outcomes are clear learning results that we want students to demonstrate at the end of significant learning experiences and are actions and performances that embody and reflect learner competence in using content, information, ideas, and tools successfully".[8]

[8] *Id.,* 1–2.

OBE is an educational paradigm that places student learning outcomes at the centre; the content of the class, the teaching method, and the assessment tool should be selected and designed for the sole purpose of helping a student achieve the learning outcome. As also reiterated by Spady, "WHAT and WHETHER students learn successfully is more important than WHEN and HOW they learn".[9]

The OBE approach emphasises what the learner should be able to achieve at the end of the learning process, what they would know and understand, and what they would be able to do towards the end of the program or afterwards. The seven core beliefs and features of OBE as envisioned by Spady are tabulated in the figure 1.

| **Beliefs and Features of Outcome-Based Education[10]** | |
|---|---|
| 1. | All students can learn and succeed, but not on the same day in the same way. |
| 2. | Success breeds success. |
| 3. | Schools control the conditions of success. |
| 4. | It emphasizes authentic, achievable, and assessable learning outcomes. |
| 5. | It is primarily concerned with students' culminating capabilities at graduation time. It centres curriculum and assessment design around higher-order exit outcomes. |
| 6. | It is accountable to the stakeholders, the learners, the teachers, the employers, and the public. |
| 7. | It leads to the change of schooling, including the curriculum, instruction, and assessment. |

[9] *Id.* 8.
[10] *Ibid.*

## A. Important concepts of Outcome-based education

1. Mission statement: It is a declarative statement about an institution's purpose and major organisational commitments. It is basically what an institution does and why does it do that. It may include its operational objectives, values and commitments to its students and the larger community.
2. Vision statement: It is a declarative statement outlining the higher-level objectives for the future whether the institution can fulfil its mission. It highlights what the institution will be able to achieve, its ideals, its values, what the students would be able to do or achieve after graduation.
3. Graduate Attributes (GA): These are the ideal traits and qualities expected of a student graduating from an accredited program.
4. Program: It is defined as the specialisation of a degree. It involves a unique combination of interlinked courses and co-curricular and extra curriculum that achieves the specialisation objectives.
5. Program Outcomes (PO): They are specialised declarative sentences that outline what a student would be able to demonstrate at the end of the degree. They have to be aligned with the graduate attributes.
6. Program Educational Objectives (PEO): They are statements that describe what the graduates of a particular program are expected to achieve in their career, especially in the first few years after they graduate.
7. Program Specific Outcomes (PSO): These statements communicate what a student should be able to do at the time of their graduation regarding their particular domain.
8. Course: It is any subject studied for an academic term (a semester, trimester, or a year). It may be theory-oriented, practical oriented or may involve both components.

9. Course Outcomes (CO): These are statements elucidating significant and vital learning goals that the student has achieved and can reliably demonstrate at the end of the course. They are analogous to POs, but in the context of a course.

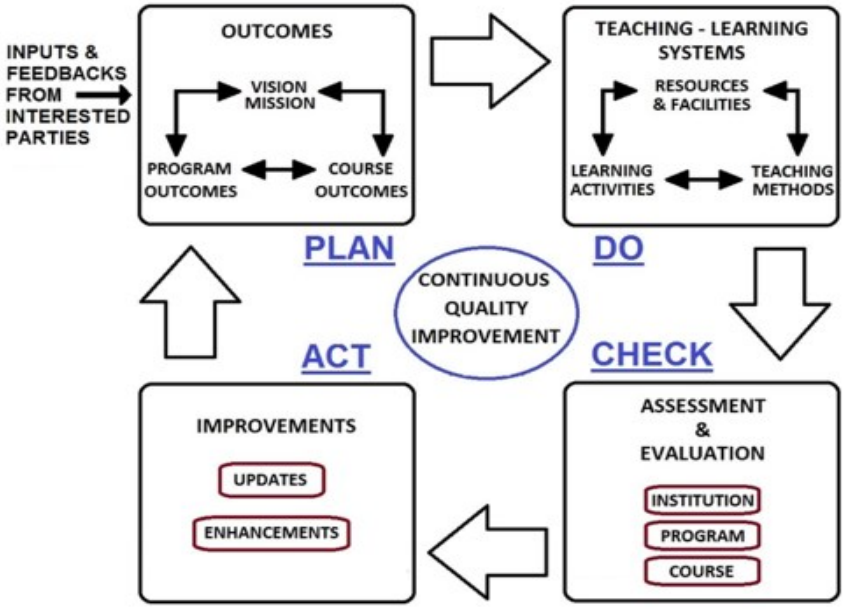
**B. OBE framework**

The OBE framework helps in the effective functioning of an educational system. The plan-do-check-act cycle ensures that curriculum, teaching and learning methods, and assessment strategies are aligned and are in a recursive process that constantly enhances itself through an evaluation and feedback mechanism. This framework adopts the outcome-based teaching-learning (OBTL) propounded by Biggs and Tang, who promulgate the process of constructive alignment between learning outcomes, exercises, and assessment methods[11]. This alignment can be achieved only when all the relevant stakeholders i.e., faculty, students, institutions, and industry, are actively involved in transformative reflection and action[12].

[11] J., BIGGS & C. TANG, USING CONSTRUCTIVE ALIGNMENT IN OUTCOMES-BASED TEACHING AND LEARNING, IN TEACHING FOR QUALITY LEARNING AT UNIVERSITY: WHAT THE STUDENT DOES, 50–63 (3rd edn. 2007).

[12] *Ibid.*

The framework, in this regard, is outlined in a diagram below:




## C. Taxonomy of Learning

The traditional education system emphasises cognitive skills and uses them to anchor teaching practices, assessment, and desired outcomes. However, cognitive research has pointed to three learning objectives domains: cognitive, affective, and psychomotor.[13] Bloom's taxonomy is a set of three hierarchical models that classify skills in terms of domains and complexity.

The cognitive domain classifies six knowledge-based skills. In 2001, the names (from action words to nouns) and order of the

[13] B. S. BLOOM, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1st ed. 1956).

skills was revised[14]. Remember, understand, apply, analyse, evaluate, and create are the six skills arranged in the increasing order of complexity. The cognitive skills start with remembering facts, concepts, terms, abstractions, et cetera in the field. The second level involves demonstrating conceptual understanding by being able to organise, translate, describe, and summarise main ideas. The third level involves the application of prior knowledge to novel situations like problem-solving, connecting two distinct ideas. The fourth level involves analysing elements, relationships, and the organisation of ideas. It includes the deconstruction of information, identifying inherent relationships of concepts and causality, and drawing inferences. The fifth stage involves evaluating information, ideas, or a structure based on internal evidence or external criteria. The final stage involves creating a novel structure from existing elements, for example, a new communication, plan, set of operations or set of abstract relations or theory. It utilises the existing parts (physical or abstract) to create something new.

The affective domain elucidates how individuals respond emotionally and their ability to empathise with others. The stages in this generally involve increasing awareness and development of attitudes, emotions, and feelings. The first stage of receiving involves passively attending to stimuli, memory and recognition and is fundamental to any learning that may happen. The second stage, responding, involves actively participating in the learning process. The third stage, valuing, involves attaching value to the learning material, an object, phenomenon, or information and showing commitment. The fourth stage of organisation involves structuring values, ideas and information and integrating them within their schemas. Finally, at the last stage of characterisation

[14] L.W. Anderson, D. R. Krathwohl & B. S. Bloom, A taxonomy for learning, teaching, and assessing: A revision of Bloom's Taxonomy of educational objectives (2001).

by value set, individuals internalise the newly acquired values and display behaviour according to them.

The psychomotor domain refers to physical activities, reflexes and body movements used for learning. It involves stages of (a) imitation, i.e., copying actions, (b) manipulation, i.e., doing an action through instruction or memory, (c) precision, i.e., doing an action without external help, (d) articulation, i.e., adapting existing skills to complete an unfamiliar action and finally (e) naturalisation, i.e., automating skills and ability to complete actions without conscious thought.

Despite criticisms, Bloom's taxonomy helps organise objectives to clarify the natural progression in skills expected to be taught and learnt. This organisation also helps design appropriate instructions and assessment plans aligned with the institutional objectives.

**D. Phases in planning a course using an outcome-based approach**

The outcome-based approach would need the professional legal institutions to do the following: (1) identify graduate attributes of a lawyer, i.e., what should an individual passing the degree know and be able to do; (2) design a curriculum to achieve these outcomes (3) convey the outcomes to the students (4) provide feedback to students on outcome attainment progress (5) assess student skill in terms of attaining graduate attributes and outcomes.

The process of planning a course using the outcome-based approach starts with asking the question of what the student should be able to do after completing the course. It initiates a backward process of identifying assessment methods to ascertain whether the student has achieved the articulated outcomes,

planning class activities and teaching methods that facilitate attaining the outcomes, and evaluating student progress.

From a design perspective, the process could be understood as a four-step structure defined by Wiggins and McTighe as 'backward design'.[15]

The entire process is recursive in nature. Every stage informs the next and then finally provides the feedback to the first step. It is by nature designed to improve with classroom application. Understanding these stages would help in understanding and appreciating how the process works.

**Phase 1: Outcome Identification phase**

The teaching process has always been cognizant that this is a goal-oriented process. However, these goals may not always be articulated explicitly. It is a crucial step as the outcome-based approach is dependent on the instructor's intention and transparency about the teaching goals and the connection with assessment methods, classroom exercises and instruction.

OBE is non-normative in the sense that it allows the instructor or institution to choose any outcome they deem fit and design the course accordingly. The outcomes may depend on many factors ranging from macro-level socio-cultural norms to micro-level teaching and learning styles. For outcomes to be comprehensive, they also have to align with the institution's culture that offers the course.

The outcomes need to align with the professional norms and values, institutional norms, values and ultimately the course and instructor's norms and values. A good set of outcomes would

[15] G. P. WIGGINS & J. MCTIGHE, UNDERSTANDING BY DESIGN (2nd ed. 2005).

combine the professional identity of a lawyer and contextual knowledge.

**Phase 2: Assessment phase**

Designing an assessment plan for the course is the second step. Carnegie's Report defines 'assessment' as "a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers."[16] According to Wegner, the design process of an assessment plan should be influenced by five principles:

1. The goal is to learn.
2. Learning should be measurable and assessable.
3. Learning is multidimensional and develops gradually.
4. Assessment must be according to the goals outlined.
5. Assessments must be contextual and continuous.[17]

Research indicates that assessment must be criteria-referenced, formative and authentic[18]. Criterion-referenced assessments communicate the skills that will be assessed and the parameters on which the skills will be assessed. The students are assessed only on the abilities taught and the goals outlined for the course; for instance, drafting a plaint, written statement etc.

Formative assessments aim at providing feedback to both instructor and the student. They provide information on whether the student can achieve the educational outcomes. They also

[16] William M. Sullivan & Carnegie Foundation for the Advancement of Teaching, *Educating lawyers : preparation for the profession of law*, 225 (2007).

[17] *Ibid.*

[18] ROY T. STUCKEY & CLINICAL LEGAL EDUCATION ASSOCIATION, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, 287 (2007).

provide feedback to the instructor on whether the topic has been sufficiently covered during teaching. For the assessment to be formative, it needs to be continuous. These essentially provide 'navigational assistance'[19] for course improvement, for instance, a quiz, written assignment, project among others.

Authentic assessments focus on the real-world application of the content learnt in the course. The idea of authentic assessment finds particular importance in professional legal education, where the goal is to train competent lawyers who should be able to apply legal knowledge to a variety of real-world problems. Assessments designed to be authentic would test this ability and provide feedback about areas that need to develop.

Besides these characteristics, validity, reliability, and fairness remain essential features of an assessment. Assessment may be 'valid' if it measures what it intends to measure. The reliability of a measure is its ability to yield similar results on repeated trials. It implies that a student would perform well on a test designed to measure the skill /knowledge that the student possesses, and the test would give consistent results for skill level without any undue advantage.

From the discussion above, it becomes evident that it is impossible to have one assessment tool that has all these characteristics. It highlights the importance of planning a comprehensive assessment within the context of the outcomes outlined and proof of learning required. Thus, requiring multiple assessment tools are required to be used throughout the course.

[19] Sullivan and Carnegie Foundation for the Advancement of Teaching.

**Phase 3: Delivery phase**

The delivery phase involves designing learning activities that facilitate the students to acquire skills, attitudes and knowledge that help them attain proficiency and the goals outlined in the above two stages. Schwartz reiterates that teachers are inherently designers who should "strive for congruence amongst instructional goals, test items and selected instructional strategies".[20]

The learning activities should be such that they allow students to learn what is needed to achieve the outcomes. It has been posited that the multi-method approach to teaching facilitates adult learning better by challenging the students than a single method. Including multiple methods also helps students capture the idiosyncratic learning styles and patterns. Every teaching technique has advantages and drawbacks and is more compatible with some subject matters than others. By choosing a combination of methods, one can play to the strengths and compensate for shortcomings, leading to a more holistic approach. Defining all the methods useful in a law classroom and their comparative analysis is beyond the scope of this chapter. However, methods relating to experiential learning, the Socratic method etc., can be referred to in sources cited here.[21]

**Phase 4: Evaluation phase**

Though it may seem that the above three phrases capture the outcome-based exercise effectively, it has to be impressed

[20] Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO LAW REVIEW (2001).

[21] Gerald F. Hess et al., *Techniques for teaching law 2*, 328 (2011); Charles Cercone, Nelson (Nelson P.) Miller & Christopher R. Trudeau, *Teaching law practice : preparing the next generation of lawyers*, 150; Nelson (Nelson P.) Miller & Vickie. Eggers, *Teaching law : a framework for instructional mastery*, 174 (2010).

upon that the final phase of evaluation is one of the most important ones.

The instructor must constantly ask themselves how much they have achieved the outlined outcomes, which is determined by whether or not students have succeeded in achieving the outcomes and to what extent. It involves asking questions; like, how each step could be followed in a better manner? Can the outcome be articulated better? Can the assessment and teaching tools be designed to align better? The whole process is recursive, with the final stage feeding into the first.

**III. Assimilation of OBE in Higher Education**

The Washington Accord[22], an effort to increase the outreach of OBE internationally, was created in 1989, where members agreed to accept undergraduate engineering degrees obtained using OBE practices. It is an autonomous agreement between member states set up common standards for bodies accrediting engineering and technical higher education programs. It was done to allow for greater mobility and transfer of credits of graduates across jurisdictions. Signatory states ensured that their accredited programs were comparable, and their outcomes were oriented towards commonly recognised skills and competencies of an engineering graduate. In the case of social sciences, the role of outcome-based education and factors impacting student outcomes need to be evaluated for establishing such common graduate attributes.

Education systems have adopted OBE across the globe at multiple levels. In the 1990's, Australia and South Africa adopted OBE, but due to lack of substantial results and community

[22] International Engineering Alliance, Washington Accord (1989) https://www.ieagreements.org/accords/washington/ (Last Visited on 27 March, 2022)

pressures, these policies were phased out[23]. In the United States, OBE programs have been adopted since 1994, undergoing revisions over the years[24]. Hong Kong applied the outcome-based approach to its higher education programs in 2005[25]. In 2008, the OBE was implemented in all public schools of Malaysia[26]. In 2012, European Union called for member states to focus on learning outcomes as a part of their effort 'Rethinking Education', which led to adopting of an outcome-based approach in the European Qualifications Framework[27].

As of 2017, the full signatories were Australia, Canada, Taiwan, Hong Kong, India, Ireland, Japan, Korea, Malaysia, New Zealand, Russia, Singapore, South Africa, Sri Lanka, Turkey, the United Kingdom, Pakistan, China, and the United States[28].

The National Board of Accreditation had started accrediting the technical education programs in India in 2013, intending to promote international quality standards, bringing focus to the OBE. Further, the impetus for OBE was caused in India when the country became a permanent signatory of the Accord on June 13,

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[23] Kevin Donnelly -Director, *Australia's adoption of outcomes-based education-a critique*, 17 EDUCATION STRATEGIES PUBLISHED IN ISSUES IN EDUCATIONAL RESEARCH (2007); Stephanie Matseleng Allais, EDUCATION SERVICE DELIVERY: THE DISASTROUS CASE OF OUTCOMES-BASED QUALIFICATIONS FRAMEWORKS, 7 65–78 (2016).

[24] Tammy L. Austin, GOALS 2000--THE CLINTON ADMINISTRATION EDUCATION PROGRAM, https://www3.nd.edu/~rbarger/www7/goals200.html.

[25] Kerry J. Kennedy, *Conceptualising quality improvement in higher education: policy, theory and practice for outcomes-based learning in Hong Kong*, 33 https://doi.org/10.1080/1360080X.2011.564995 205–218 (2011).

[26] Mohd Ghazali Mohayidin et al., *Implementation of Outcome-Based Education in Universiti Putra Malaysia: A Focus on Students' Learning Outcomes*, 1 INTERNATIONAL EDUCATION STUDIES 147–160 (2008).

[27] EUROPEAN COMMISSION, RETHINKING EDUCATION: INVESTING IN SKILLS FOR BETTER SOCIO-ECONOMIC OUTCOMES, (2012).

[28] International Engineering Agreements, URL:https://web.archive.org/web/20120126021804/http://www.washingtonaccord.org/Washington-Accord/signatories.cfm.

2014.[29] University Grants Commission (UGC) introduced Learning Outcome Based Curriculum Framework (LOCF) in 2018 to assimilate the outcome-based education for studying other disciplines while majoring in one[30]. The LOCF followed the Choice Based Education System, initiated in 2015, as a part of a series of qualitative reforms in the higher education system in India.

**A. OBE in Legal Education**

The push for the adoption of OBE in legal education came from three independent sources. The Report of the Outcome Measures Committee by American Bar Association (2008), Best Practices for Legal Education: A Vision and a Road Map by Clinical Legal Education Association (2007) and Carnegie Foundation for the Advancement of Teaching's Report Educating Lawyers: Preparation for the Profession of Law (2007). These reports elucidated the need to rethink legal education by thinking backwards about the learning process. They needed the law schools to focus on enhancing the students' learning capability rather than teaching methods; it meant that the design of the lessons had to focus on learning rather than teaching. Therefore, the preliminary step would be to identify the attributes and competencies of a 'good' lawyer to determine the outcome of a law school ultimately[31]. Thus, a sound professional legal education

[29] NBA, *International Recognition*, URL: https://www.nbaind.org/Accreditation/InternationalRecognition (Last Visited on 27 March 2022)

[30] UGC, Learning Outcome based Curriculum Framework (LOCF) (August 10, 2018) https://www.ugc.ac.in/ugc_notices.aspx?id=MjA5Ng==((last viewed on March 27, 2022); Also see: UGC, FORMAT: Suggestions for subject specific Learning Outcomes based Curriculum Framework (LOCF) F.No.2-4/2018 (LOCF) (July 18, 2018) URL: https://www.ugc.ac.in/pdfnews/7988674_Format-for-subject-specific-views-new.pdf (Last Visited on 27 March 2022)

[31] CATHERINE L CARPENTER ET AL., *Report of the Outcome Measures Committee*, (2008); Stuckey and Clinical Legal Education Association.; Sullivan and Carnegie Foundation for the Advancement of Teaching.

program would aim towards teaching students to think, perform, and conduct like a professional lawyer[32].

MacCrate report has identified ten critical lawyering skills and fundamental values that legal education must impart[33]. Best Practices report stresses on outcomes that develop competence to resolve legal issues effectively and responsibly[34]. Law Commission of India in its 184th Report has cited eight skills; these were: legal research, factual investigation, communication, counselling, negotiation, skills required to employ or advise a client about the options of litigation and alternative dispute resolution mechanisms, administrative skills necessary to organise and manage legal work effectively; and the analysing skill involved in recognising and resolving ethical dilemmas. These reports, thus, help in defining outcomes that align with the attributes of a competent and ethical lawyer.[35]

## IV. Legal Education and OBE: Gaps and Opportunities

While luring the prospective students towards their institution, the educational institutions show a rosy picture. In the legal education field, these dreams of great offers from corporate firms, companies, among others, are shown with the "conditions apply" tag. The students and their parents lured by the offer take the admission. However, towards the end of the course, most feel hopeless; while scoring less on the skills for high-end placements, they end up seeking counselling for higher education, judiciary, and other such competitive exams. To close

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[32] *Ibid.*

[33] Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENNESSEE LAW REVIEW (1996).

[34] Stuckey and Clinical Legal Education Association.

[35] Law Commission of India, *184th Report on Legal Education & Professional Training and Proposals for amendments to the Advocates Act, 1961 and the University Grants Commission Act*, 1956, 54–55 (2002).

the 'skills gap' and increase emphasis on employability, educators constantly try to align learning outcomes with professional needs. Though, while doing so, they often lose sight of the broader values and skills required to have a long-term approach and not only aim for a temporary demand.[36]

One of the reasons for taking legal education as purely professional and outcome-based is that it is the qualifying degree for a person to become a lawyer, like other degrees like medical, engineering, and other professional courses. There is a cost-benefit analysis while choosing a suitable trainee / probationer / employee by the employer and selecting a suitable course by the prospective student/their parents, keeping a 'good' placement in mind.[37] Primarily due to the rising cost and lowering of standards of legal education, employability has been marred in the last two decades. The post-covid scenario has pushed the freshers beyond margins as due to the restrictions on the physical functioning of the courts, the experienced independent lawyers are ready to work for a lesser salary. Such a precarious situation makes it imperative for law schools to take OBE seriously.

Though the term OBE has gained currency in recent times, most of the law schools and the stakeholders lack clarity on various aspects; which need to be elaborated:

1. Their vision and mission and outcomes sought through their various programs;
2. The gap in legal education and attainment of objectives; and

[36] Sood, Mansi, *Legal Education and Its Outcomes: Digging Deeper into the Successes and Failures of India's National Law Schools*, ii, 5 (August 9, 2017) URL: SSRN: https://ssrn.com/abstract=3062519 or http://dx.doi.org/10.2139/ssrn.3062519.
[37] *Id.*, 6-7.

3. Alignment of the legal education with the opportunities in legal profession.

**A. Need for Clarity of Vision, Mission and Outcomes**

While looking through the recommendations of various committees and commissions and impetus by the Ford Foundation to follow the American legal education system; the Bar Council of India (BCI) extended its focus on students with its proposal to increase the time-period needed to earn the LL.B. to five years. The Council wished to encourage students to enter law school earlier and leave better prepared to practice law.[38]

The objectives of these national law universities (NLUs) have been to impart comprehensive[39] and interdisciplinary[40] legal education to promote cultural, legal, and ethical values to promote the rule of law and virtues enshrined under the Indian Constitution. These objectives also refer to developing in the student "a sense of responsibility to serve society in the field of law by developing skills concerning advocacy, legal services, legislation, law reforms and the like".[41] Other NLUs followed suit while focusing on interdisciplinarity, students' responsibility towards social service, research, and attaining expertise in specific fields of law, nationally and globally.[42] Thus the mission of these institutions have been very noble and aimed toward

[38] *S. Radhakrishnan, The* Report of the University Education Commission (1948), http://www.education.nic.in/cd50years/n/75/7Y/Toc.htm (Last Visited on 10 March 2022). Also see, LOVE DASGUPTA, REFORMING INDIAN LEGAL EDUCATION, p 437.

[39] Sections 4 & 5, The NLSI Act, 1986, Karnataka Act No. 22 of 1986; The NALSAR University Act, 1998, Act No. 34 of 1998, s. 4 & 5.

[40] Objectives and Vision: National Law University, Delhi, https://nludelhi.ac.in/ab-vision.aspx (last viewed on March 20, 2022).

[41] The NLSI Act, 1986, s. 4 & 5; Karnataka Act No. 22 of 1986; Sections 4 & 5, The NALSAR University Act, 1998, Act No. 34 of 1998

[42] Vision & Mission: National law University, Jodhpur, http://www.nlujodhpur.ac.in/about.php?mn=vision (Last Visited on March 19 2022).

service to society while attaining perfection in legal education. In this regard, the mission of the NLUs has been to create a generation of able, competent and humane lawyers who will not only enter the legal profession but would also address the needs of the 21st century.[43] Thus outcome-oriented teaching-learning in legal education was imbibed by the first few NLUs.

The related vision has been to provide socially relevant learning experiences to the students and create opportunities for a more inclusive, progressive, and innovative approach to legal education, which could be turned into an instrument of social, political and economic change.[44] Though, when the same vision, mission and outcome-based study is sought from the students, teacher or administration; they lack on the understanding of these concepts/specifications for their institutions, programs, courses, etc.[45]

The premier legal education institutions, particularly the NLUs, had contradictory approaches; on the one hand, they had social justice and inclusivity as their mission; on the other, they also had an elitist approach. The alarming issues were high fees, financial issues, non-transparency, accountability, poor quality of research and faculty, the limited value of clinical components and aspects of internal assessments, and very few passed out students joining the Bar.

**B. Gap in Legal Education and Attainment of Objectives**

As reported in a recent study, the students felt that the lack of practical experience among the teaching staff made the

[43] About NALSAR https://nalsar.ac.in/idi/about-nalsar/ (Last Visited on March 19 2022).

[44] About NLSIU, https://www.nls.ac.in/about/about-nlsiu/ (Last Visited on March 19 2022). Also see: *supra note* 34.

[45] W. Wesley Pue, *Legal Education's Mission*, 42 LAW TEACHER, 283–85 (2008).

learning very academic and did not give them a realistic idea of the operationalisation of the law. Consequently, any practical learning was only incidental through activities such as internships and moot courts. In the same vein, the employers unanimously reported a considerable disconnect between what was taught and what was required in practice. These were the issues with a few of the premier Indian legal educational institutions, what to say about the rest. In particular, corporate employers (both firms and companies) lamented the lack of commercial appreciation, although practitioners also felt the need for more simplified practical knowledge. A specific lacuna identified by corporate firms was basic accounting knowledge. To put all these concerns in one phrase, one employer noted, "Ultimately, what we do in these firms is very different from what is taught".[46] Thus, the presence of clinical and professional courses does not add up to the applied knowledge sought from law graduates.

According to the Report of a committee,[47] the focus of professional legal education has gone beyond the primary role of legal practitioners. Though, as per BCI, the legal education could not balance the social relevance of legal education, practice, and technical skills. The BCI itself lacked the linking of this noble aim with the curriculum developed by it. Further, the BCI did no good by differentiating between the two categories of institutions imparting legal education, i.e., law schools/colleges, focusing only on the professional aspect of legal education and law universities, aiming toward broader legal education. It also emphasised the need to cater to rural, urban, and national requirements.[48] Keeping diversity and

[46] Mansi Sood, *supra note* 30, 28.

[47] National Knowledge Commission, Government of India, *Report of the Working Group on Legal Education*, 5 (2007)

[48] Bar Council of India, *Draft Report of the Curriculum Development Committee*, Volume I, 10 (2010)

autonomy in mind, while lacking the expertise to do so, it could not come to a uniform draft of the curriculum. It suggested that the institutions and the universities develop the same as per the needs of the students, specialisation, and market requirements. The lack of expertise concerning legal education and its supervision has raised further doubts about the role of BCI in ensuring the quality and uniformity of legal education. Further its draft Rules of 2019 have still not seen the light of the day.

### C. Need for aligning the Legal Education towards the Opportunities in Legal Profession

The opportunities for professional legal education have not been limited to the bar and the bench in the twenty-first century. However, it has extended to various permutations and combinations with other fields. The contemporary times have raised the demands for combinations like Bachelor of Commerce with Bachelor of Laws, Bachelor of Technology with Bachelor of Laws, and similar other combinations. It is still not enough to cater for the specialisations needed, like micro-combination of law with biotechnology, law and project management, law, and fashion designing, among others.

Further, the extension of options post-undergraduate degree in law, rather than mainstreaming the opportunities, has intrigued the freshly graduated student regarding the specialisation or sector they take up. Legal practice does not seem lucrative unless the law graduate has financial cushioning or family background in practice, except in some cases where the passions for continuing in practice outdo every challenge. The concerns for freshers in early career related to issues like low remuneration, clerical nature of work, slim chances to lead a matter, long working hours, almost no leaves and a very low work-life balance. A fresher who initially feels bound by the first job,

where the person needs to sit for at least eight to ten hours, supposed to agree to and obey the instructions of the boss, feels further demotivated, especially when compared to a peer working in a corporate job or other fields. Further, pressure is imposed not only on the students but also on legal educational institutions as good placement with high paying, mostly corporate jobs have become the epitome of success in the field of legal education.[49]

Furthermore, globalisation and liberalisation opened a host of opportunities for legal graduates, though the demands regarding their skilling were varied. Students are vouching for these jobs,[50] wherein the employers are looking forward to already trained students so that it could be a win-win situation for them in the cost-benefit analysis. It requires the evolution of legal education, especially regarding teaching-learning, skilling and syllabi, and curriculum revamp.[51] In this regard the regulatory bodies including the Higher Education Departments of the Union and State Governments, UGC and BCI have failed the stakeholders in every which way.

## V. Conclusion

Professional legal education is transforming wherein it is expected of the institution to be responsible for legal education in the traditional sense and provide viable skills that make the student employable as a lawyer. Outcome-based approach to the teaching-learning process is a valuable tool in this sense. A 'systems transformation approach' forces policymakers and practitioners to see education as a tool for achievement of desired goals; rather than a goal by itself. Through education, society

[49] Department of Education, Government of India, *Report of the Committee to Advise on Renovation and Rejuvenation of Higher Education*, 9-10 (2009)

[50] *Ibid.*

[51] *Ibid.*

should achieve some desired end, like, making the future generation employable, socially conscious, ethical, law-abiding. In order to achieve this, the educational planning and practice would have to be strategic and goal-focused rather than uncoordinated and laissez-faire.[52]

OBE is helpful in practice and provides clarity by setting expectations ahead of the course. With this clarity, the instructor can design the course to suit the student's needs. This method does not fixate on a particular teaching method; it allows the instructor flexibility and space to explore the best roadmap to reach the goals. Another benefit of OBE is that it allows for comparisons across institutions facilitating lateral entries for students. It asks for more extensive involvement of students and other stakeholders in designing outcomes and curricula. This involvement leads to students taking up a more active role in learning.

A significant criticism of OBE comes from the fact that by focusing on what is quantifiable and measurable, the focus on holistic learning is compromised, and the non-tangible aspects of the teaching-learning exercise are sacrificed at the altar of measurement. However, with a conscious involvement of all stakeholders in this exercise of designing the outcome-based program, it will lead to an educational system that constantly evolves and leads to more fruitful outcomes.

[52] SPT Malan, *The "new paradigm" of outcomes-based education in perspective*, 28 JOURNAL OF FAMILY ECOLOGY AND CONSUMER SCIENCES/ TYDSKRIF VIR GESINSEKOLOGIE EN VERBRUIKERSWETENSKAPPE, 28 (2010).

## Chapter - 9

# HOW TO PREPARE AND DELIVER A LAW LECTURE?

*Dinesh B. Kolte*[*]

## I. Introduction

Lecture method is viewed as the most extensively used educational method within all the educational institutions almost at all levels of higher education and so in law teaching. In this method of teaching the instructors have to impart information to the pupils in terms of lesson strategies and theoretical concepts during the classroom teaching[1]. Lectures usually refer to the lessons delivered to a group of students where the teacher's role is active, and the students are the passive listeners[2]. The role of a teacher is to plan the lecture and delivering it.[3] Lecture refers to a period of continuous explanation by the teacher where distinct learning activities are used by the teacher after careful self-assessment about personal strengths, the learning capabilities of the students', the nature and content of subject to be taught and learning objectives.[4] The law teacher has to focus on core areas while preparing for the lecture[5] and must cover the topic right from its historic aspect till present situation. The *steps* while

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1 Hall, Jerome, *Teaching Law by Case Method and Lecture,* ARTICLES BY MAURER FACULTY 1469 (1955). www.repository.law.indiana.edu/facpub/1469 P-101

2 As accessed from www.futurelearn.com/info/courses/prepare-to-study-uk/0/steps/48553

3 R.H. Binns, What Do Lecturers Actually Do? (2019), URL: www.allaboutlaw.co.uk/law-careers/what-can-i-do-with-a-law-degree/what-do-lecturers-actually-do

4 Effective Lectures from Baylor's Academy Teaching guides www.baylor.edu/atl/index.php?id=965135

5 B. F. Butler, *Plan for the Organization of a Law Faculty and for a System of Instruction in Legal Science, in the University of the City of New York*, UNIVERSITY PRESS 25-26 (1835).

*preparing* for Law lecture must include following contents in the lecture:

- Objectives of the lecture
- Outcome of the lecture
- Historical perspective
- Constitutional aspect
- Jurisprudential perspective
- International Treaties and Conventions
- Critical assessment
- Research based empirical data if any
- Concluding remarks

**Objectives of the Lecture-** the lecture must not be limited to teach the norms of the legal system. The lecture must be focused on potential use of the knowledge of law and its applicability as per the situation. The students must be made aware as to why they need to know about the law and what approach they need to adopt to understand law. Knowledge about applicability of a law in a specific situation is vital hence while preparing for the lecture the teacher must focus on this aspect also and prepare objectives accordingly.

**Outcome of the Lecture-** the teacher must inform the students that at the end of the lecture what knowledge insight they will be enriched with[6]. How, when and where the knowledge gained by the students in the lecture can be applied.

**Historical Perspective-** the law teacher must give a brief overview to the students as to why and when the law was enacted and enforced. Any historical event that led to enactment of the law For

[6] Bloom et al., *Taxonomy of Educational Objectives: The Classification of Educational Goals*, DAVID MCKAY COMPANY, Inc (1st edn. 1956).

example- Vishaka case[7], Nirbhaya[8] incident and Justice Verma Committee report that led to enactment of The *Sexual Harassment* of Women at *Workplace* (Prevention, Prohibition and Redressal) *Act*, *2013* or landmark Judgment of Unni Krishnan's case[9] that led to the enactment of Right to Education Act 2009 and transformed right to Education as the Fundamental right or Shah Bano case[10] that led to codification of Muslim personal law in the form of The Muslim Women (Protection of Rights on Divorce) Act, 1986.

**Constitutional Aspect-** whenever law teacher prepares for a lecture on any topic of law the teacher must rely upon its constitutional perspective as to from which part of the constitution the law is related. If the lecture is related to Right to information Act than the teacher must co relate it with freedom of speech and expression enshrined under Fundamental Rights Chapter Article 19 Freedom of speech and expression from which the Right to information emanates. Similarly, for right to education 86th Constitutional amendment Act, Constitution provisions such as Article 21, 24, 30(i), and 39(e) & (f). Article 45 must also be studied to bring clarity to the topic to be covered.

**Jurisprudential Perspective-** Whenever a law teacher is preparing a lecture on specific topic the teacher must develop self-understanding about the topic with various schools of jurisprudence and philosophy behind the same this gives insights to develop various legal thoughts. It is undisputed that laws are necessary but what is the aim of law? How will a particular law benefit the society? Why was a particular law struck down by

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7 Vishakha *and others* v State of Rajasthan; AIR 1997 SC 3011

8 Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1

9 Unni Krishnan J.P and Others v. State Of A.P And Others 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290.

10 Mohd. Ahmed Khan v. Shah Bano Begum 1985 (1) SCALE 767; 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945

judiciary? What was the Philosophy behind it? All these points must be covered by the teacher while preparing for lecture. If teacher is preparing the lecture on criminal law Section 377 than philosophy behind making it a criminal offence at the time of its insertion under the IPC and Philosophy applied at the time of decriminalizing the same in Navtej Singh Johar's case[11] must be considered. Judicial interpretation of the law on particular topic in the light of landmark judgments is of vital importance while preparing for a law lecture.

**International Treaties**[12] **and Conventions**[13] **–** the teacher while preparing for law lecture must take into consideration the relevant treaties and conventions if any relating to the topic to be covered during the class and must prepare on the same accordingly. While preparing for lecture on law relating to women CEDAW[14] convention and other related conventions can be highlighted.

**Critical Assessment-** critical assessment about the meaning, nature, purpose of the law as well as pros and cons of a particular law or about a judgment helps in better understanding of the subject. It is not always to find loophole or gap rather appraisal of the law or judgment also means critical assessment[15]. How a particular law may lead to desirable social change and what can be its adverse effects can be assessed and teacher can put forth its self-opinion about the same.

**Research based Empirical/ Non-Empirical Data -** one source is not sufficient to present a well-informed topic. Gathering information from multiple and authentic sources of information

[11] Navtej Singh Johar v. Union of India AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016

[12] Binding agreement between nation-states forming the basis for international law

[13] They have built in mechanisms to ensure compliance, such as procedures for inspections.

[14] The Convention on the Elimination of All Forms of Discrimination against Women

[15] Arwen Joyce, *Becoming a critical thinker*, THE LAW TEACHER, 55:4, 557-558 (2021), DOI: 10.1080/03069400.2021.1973754

and to critically appraise the points of connection and discrepancy in the information acquired from different sources is crucial. Facts and figures collected from authentic sources such as NCRB[16] Data, Reports of Law Commission; Parliamentary debates; newspaper reports; Television news; speeches of dignitaries; reference books; text books; scholarly research articles from good law journals; legal magazines; legal websites and latest judgments given by high courts and Supreme Court on the concerned topic all these combined together enrich the literature to be used while preparing for a lecture.

**Concluding Remarks-** concluding remarks of the teacher are very important as they help in summarizing core points and help students retain key concepts taught during the lecture. Hence the teacher must try to recapture whole purpose of the lecture including objectives and outcomes precisely as it is not possible to retain entire lecture in memory.

Preparation of the lecture is not enough now the teacher needs to focus on delivering lecture and while delivering lecture the teacher needs to ensure that the message that is to be communicated must be done properly and the pupils understand the same. The key points to be taken care while *delivering* the lecture are:

- Use Simple and easy unambiguous language
- Use of Case laws
- Voice must be audible
- Eye contact with the students
- Use of teaching aids
- Avoid reading from the text
- Current examples with the help of narrative wherever possible

[16] The National Crime Records Bureau.

- Encourage students to put forth their perspective
- Clear the doubts of students
- Revise previous topic briefly
- Give handouts to the students

**Use Simple and easy unambiguous language**- the lecture while delivering the lecture must ensure to speak fluently but in simple and easy to understand language. Legal language is the traditional language used by lawyers; judges and legal fraternity but it is not easily understood by common people; hence the law teacher must use simplified terms to make the students understand the same.

Whenever Latin Maxims[17] are used they must be explained in plain English language so that students are able to easily understand them and use them at necessary point of time. While interpreting the statutes simple and unambiguous language must be used thereby ensuring easy understanding on part of students.

A teacher can make out by face reading whether the students are able to understand the topic or not and can opt even being bi-lingual as the main purpose of delivering the lecture is to make the students understand the concepts. Some teachers may be having more knowledge, but they don't use simple language and thus not able to quench the thirst of knowledge of the students hence it is vital the teacher use simple and easy language to communicate with students during the lecture.

[17] It is an established principle or proposition of law or a legal policy usually stated in Latin form

**Use of case laws-** the teachers of law while delivering teachers must cite landmark judgments[18] both from Common law[19] Judgments and Higher judiciary and clearly highlight the Ratio[20] and obiter of the case[21]. Case comments and theories applied by the judges while delivering judgments must be analyzed and even students must be encouraged to critically analyze the same. The judgments having conflicting views must also be discussed as it helps the students understand judicial opinion in cases having similar issues.

**Voice must be audible-** quality of voice is of utmost important[22]. Even if a teacher is having effective communication skills but his voice is not audible then the student's lose interest in the class hence it is essential for a teacher to raise the pitch of voice so that it reaches to all the students in the class. Even if the size of class is large or large number of students are there present in the class than the teacher must use micro phone while delivering the lecture.

**Eye contact with the students-** maintaining eye contact with the students makes the students attentive in class.[23] The teacher can keep a vigil on student's activities during the lecture and prevent them from getting distracted during the course of the lecture.

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[18] Maitland, F. W. (1966). Two Lectures Delivered by F. W. Maitland: Downing Professor of the Laws of England in the Easter Term, 1889. The Cambridge Law Journal, 24(1), 54–74. www.jstor.org/stable/4505071

[19] Body of unwritten laws based on legal precedents established by the courts

[20] Latin term means '*the reason for deciding'*

[21] Statements within a judgment that do not constitute as the ratio and is subsequently non-binding on future cases

[22] W EVANS; J. SAVAGE, USING YOUR VOICE EFFECTIVELY IN THE CLASSROOM, (Routledge 2017)

[23] Haataja, E., Salonen, V., Laine, A. et al., *The Relation between Teacher-Student Eye Contact and Teachers, Interpersonal Behavior during Group Work: a Multiple-Person Gaze-Tracking Case Study in Secondary Mathematics Education*", n. Educ Psychol Rev 33, 51–67 (2021). doi.org/10.1007/s10648-020-09538-w

**Use of teaching aids-** use of audio-visual aids, flow charts, diagram etc. through ICT tools helps to communicate with the students in better form. It helps in keeping long lasting impression on the minds of the students.[24] Technological advancements in the form of digital boards and smart classrooms can be used by teachers for further enhancing their presentation skills.

**Avoid reading from the text-** the teacher must avoid reading directly from the notes prepared for the lecture or from the PPT Screen[25]. If the teacher starts reading students lose interest in the class. The teacher must encourage the students to read the provision of extracts from important cases at breaks that link with main philosophies as it increases students' confidence in tackling specific reading materials and develops their analytical skills.[26]

**Current examples and narrative[27] wherever possible must be used-** The teacher must give live and current examples during the session so that the students are able co-relate the same with the topic covered during the lecture and remembers the same forever.[28] Narratives must also be used during the course of lecture for analyzing the text of the laws and regulations; examining the form, structure and rhetoric or legal consideration contained in the legal text such as court verdict by using critical

[24] G. Shabiralyani et.al., *Impact of Visual Aids in Enhancing the Learning Process Case Research: District Dera Ghazi Khan*, JOURNAL OF EDUCATION AND PRACTICE, URL: www.iiste.org ISSN 2222-1735 (Paper) ISSN 2222-288X (Online) Vol.6, No.19 (2015).

[25] Allan M Jones, *The use and abuse of PowerPoint in Teaching and Learning in the Life Sciences: A Personal Overview*, BIOSCIENCE EDUCATION, 2:1, 1-13 (2003) DOI: 10.3108/beej.2003.02000004

[26] Kylie Burns and others, Active Learning in Law by Flipping the Classroom: An Enquiry into Effectiveness and Engagement, 27 LEGAL EDUCATION REVIEW 163, 165 (2017).

[27] A narrative is a story

[28] The newsletter, *Speaking of Teaching, produced by the Center for Teaching and Learning (CTL)*, STANFORD UNIVERSITY, URL: -ctl.stanford.edu/Newsletter/ Winter, Vol. 14, No.1 (2005).

method in language or writing and the extra legal or outsider views or thoughts in the area of laws[29].

**Encourage students to put forth their perspective-** Student's participation is very crucial during the lecture hence the teacher must encourage the students to put forth their perspectives.[30] The teacher by encouraging the students to express their opinion helps in building the confidence of the students and enhances their communication skills.[31]

**Clear the doubts of students-** the teacher must allow the students to ask questions[32] during the session if the students don't ask any questions, then the teacher must take their feedback this will help the teacher understand whether the student's concepts are getting cleared or not; and whether the course objectives and outcomes have been achieved or not.[33]

**Revise previous topic briefly-** the teacher prior to starting new lecture must revise previous topic briefly so that the students get proper link of previous topic with the current one.[34]

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[29] J.Saibih, *Using Narrative Theory on Analysis of Law and Human Rights: Searching Truth on Tanjung Priok's Incident in Indonesia*, ADVANCES IN ECONOMICS, BUSINESS AND MANAGEMENT RESEARCH, vol.130 3rd International Conference on Law and Governance I CLAVE (2019).

[30] G.Henk .et.al, *On the Use and Misuse of Lectures in Higher Education, Health Professions Education*, Vol. 1, Issue 1, Pages 12-18, ISSN 2452-3011, doi.org/10.1016/j.hpe.2015.11.010

[31] U. Bergmark & S. Westman (2018) Student participation within teacher education: emphasizing democratic values, engagement and learning for a future profession, Higher Education Research & Development, 37:7, 1352-1365, DOI: 10.1080/07294360.2018.1484708 (2015).

[32] C. Chin & J. Osborne, Students' questions: a potential resource for teaching and learning science, Studies in Science Education, 44:1, 1-39, DOI: 10.1080/03057260701828101 (2008)

[33] P. THOMAS, LEARNING ABOUT LAW LECTURING BY THE NATIONAL CENTRE FOR LEGAL EDUCATION, E-Book available at ials.sas.ac.uk/ukcle/78.158.56.101.html (2000).

[34] Brown, S. & Race, P. (2002). *Lecturing: A practical guide*. London: Kogan Page.

**Give handouts to the students-** Handouts[35] are the primary tool that helps the students to learn and understand the class content in lectures better manner.[36] The purpose of lecturing is to impart knowledge to the students and the *students first obtain knowledge independently*, either through pre-reading or through brief presentations by the teacher during the class.[37]

## II. Conclusion and Suggestions

Lecturing is the most useful means for communicating relevant information in higher educational institutions. Even in times of pandemic this method has not lost its significance. Lecture method is most expedient and inexpensive method for teaching law subjects. This method is used in order to impart factual knowledge and clarify the concepts in the absence of the background information for the students the main emphasis in this method is on teacher's ability to prepare and deliver the content. The role of teacher is to make the lecture interesting; with audio -visual aids. Above all the content of the lecture must be logical and as per students' requirements and standard. Thus, it can be concluded that the lecture method can be very effective, if it is made more interactive and interesting for students. The lecture method must be adopted by teachers for teaching law subjects whenever the facts or problems are conflicting or confusing in nature as the teacher's skill of clarifying doubts will enrich the students with in-depth knowledge on a particular issue.

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[35] *Lecture notes*

[36] A. Wongkietkachorn, J.Prakoonsuksapan, D.Wangsaturaka,. *What happens when teachers do not give students handouts?*, MED TEACH. (2014) Sep;36(9):789-93. doi: 10.3109/0142159X.2014.909921. Epub. PMID: 24820201 (2014)

[37] *Supra* Note 31

## Chapter - 10

# ROLE OF TRIAL ADVOCACY IN PROFESSIONAL LEGAL EDUCATION

*Mamta Rana*[*]

## I. Introduction

India is a democracy in which the Constitution's soul is the rule of law, and the legal profession is the key stakeholder in upholding the Constitution's values.[1] The legal profession has the biggest influence over the development and operation of the legal system. As a result, legal education is critical in training lawyers to play an important role in society.[2]In the history of India's legal education, the 1960s and 1970s were a pivotal period,[3] when the legal aid movement and various legal aid committee reports began to stress the need of experiential learning, or learning on the job,

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[1] The Preamble of the Indian Constitution provides that justice – social, economic and political has to be provided to the citizens. Part IV of the India of the Indian Constitution provides fundamental rights to the citizens.

[2] Priyashikha Rai et. al., *Conceptualising Clinical Legal Education in Legal Pedagogy of India: Significance and Challenges* TURKISH JOURNAL OF COMPUTER AND MATHEMATICS EDUCATION 174, 12(12) (2021).

[3] In 1949, The Bombay Legal Education Committee advised that practical courses be made mandatory only for students who wish to pursue a career in law, and that teaching methods include seminars, group discussions, moot court competitions, and other similar activities. Later, in 1958, the Law Commission of India's 14th Report recognised the value of professional training and the need for a balance of academic and practical education. The Commission's report focused on institutionalising and strengthening legal education's overall standards. There was a call for better skills and ethics instruction in law school. As a result, the Bar Council of India suggested that practical training be included in the curriculum in 1977. In the history of CLE, a study by the University Grants Commission (UGC) outlined the goals of reformed teaching as making students more sensitive to learning and requiring them to demonstrate their comprehension of the law.

in legal education. When the legal aid movement began in India in the 1960s, it was assumed that law schools would play a significant role in dispensing legal services through legal aid clinics as there is a public commitment to legal aid that is enshrined in the Indian Constitution[4] as a policy ideal.[5] Within the law school framework, there should be a teaching method that will instil a spirit of public service and assist young law "students in confronting the uncertainties and challenges of problem solving for clients in fora that frequently challenge precepts regarding the rule of law and justice." This is exactly what clinical legal education (CLE) is aiming for in terms of teaching methods and public service spirit. Professor N. R. Madhava Menon[6] describes clinical legal education as 'a pedagogic technique in that it focuses on the learner and the process of learning,' rather than producing future lawyers who are "mere craftsman manipulating advocacy skills in the traditional role of conflict resolution in court." As a result, CLE plays a key role in ensuring that many low-income persons have access to justice. It does so not only by exposing law students to the legal issues that the poor face, but also by letting them to experience the pressure of having to come up with substantial and creative solutions to unmet legal demands.[7] The

[4] "Article 39A. Equal justice and free legal aid– The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.] Inserted by the Constitution (Forty-second Amendment) Act, 1976, section 8 (w.e.f. 3-1-1977)".

[5] Frank S. Bloch and Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, MICHIGAN JOURNAL OF INTERNATIONAL LAW, 96, 12:92 (2011).

[6] Professor N R Madhava Menon, widely regarded as India's father of modern legal education, was a consistent advocate for legal educators to seek to make legal education more socially relevant. He was a driving force behind the formation of the Global Alliance for Justice Education and was a pioneer in the field of justice education (GAJE). He dedicatedly worked for and moulded the landscape of legal education, having built India's first national law school and thereby paving the path for several more around the country. In his opinion, the terms' socially relevant legal education' and 'justice education,' albeit spelled differently, meant the same thing and served the same meaning and objective.

[7] See *Supra* note 5 at pg.178

fundamental purpose of involving law students in the national legal aid movement was to make them feel more responsible for the significant segment of the Indian populace who were unable to access justice owing to their socio-economic circumstances.[8]

## II. What is Clinical Legal Education?

It's difficult to define 'clinical legal education' (CLE) or a 'clinic' because it takes several forms. To use a metaphor, CLE can be compared to a cathedral on one hand and a market on the other. Treating a clinic like a cathedral — defining very narrowly what its design must be, what resources and materials it must have available, who may enter, and what activities must be undertaken therein - discourages the maverick creative spark that is so frequently the hallmark of CLE. Imagine a clinic as a bazaar, available to anyone who wants to increase legal education and access to justice for the general population. This is a richer approach that better reflects reality. Some stalls will emerge more regularly than others, and each will do business in their own way, but the basic mentality of each stallholder is broadly similar. Although a thorough description of CLE is difficult to come up with, all clinics share two similar denominators: The participation of law students (and maybe others), acting under professional supervision where necessary, in the performance of a legal service (real or simulated).[9]

Certain fundamental structural variables, such as whether law is taught as an undergraduate or graduate course, or whether additional post-graduate study is required before entering practice, dictate clinical education approaches in the first instance. Economic, cultural, and financial issues all have a role.

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[8] Shuvro Prosun Sarker, *Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India*, CLINICAL LEGAL EDUCATION IN ASIA, 177 13 (2013).

[9] Linden Thomas and Nick Johnson, *Clinical Legal Education Handbook*, INSTITUTE OF ADVANCED LEGAL STUDIES UNIVERSITY OF LONDON PRESS 8 (2020).

The first relates to the professional educational mission of clinical legal education. Clinics around the world focus on two curricular aims intended at preparing students to practise law, neither of which is fully emphasised in standard law school curricula: professional skills training and instilling professional principles of public responsibility and social justice. The approach is the second distinguishing feature. A dedication to experiential learning is at the heart of the clinical teaching style. Clinical training in professional skills and values takes place when students are engaged in real or simulated professional tasks, rather than in a typical classroom setting where law is taught through one-way lectures or from case studies and written materials. Finally, clinical legal education is part of a larger endeavour to transform legal education by expanding the professional curriculum, employing innovative teaching methods, and educating lawyers to work for social justice.[10] CLE refers to any law school course or programme in which law students participate in doing what lawyers generally do, such as representing clients under the supervision of lawyers/teachers, in the framework of legal education. It also entails instructing and mentoring students on how to examine situations from various perspectives in order to comprehend the legal process in relation to social policies and processes. The evaluation of the situation in which legal education takes place must precede the design of an academically sound and professionally responsible clinical technique for legal education. The learner's status and position are the most essential factors in this educational environment. The willingness of law students to make their own judgments and face the consequences to a greater extent than other college students is reflected in their standing.[11] Clinical legal education

[10] Frank S. Bloch, *A Global Perspective on Clinical Legal Education*, Revista De Educasion Y Derecho, EDUCATION AND LAW REVIEW 3 (2011).

[11] Abidha Begum, Necessity of certain reforms in the field of clinical legal education-Importance of clinical legal education in India, INTERNATIONAL JOURNAL OF POLITICAL SCIENCE, LAW AND INTERNATIONAL RELATIONS, 2 4(2) (2014).

is a one-of-a-kind approach to learning the law that incorporates experimental learning, commonly known as "learning by doing." Because their success is determined by their own efforts rather than external influences, students build confidence via practical training. It helps students to put their knowledge into practise while also fostering introspection and self-examination, resulting in self-motivated and dedicated pupils. Furthermore, because Clinical Legal Education is based on a practical approach, it aids in the development of critical advocacy abilities. Just a few examples include research, communication, client and witness interviews, counselling, drafting, negotiating, and problem solving. A law clinic can help build these skills while also fostering a partnership between the law school and the community. It can offer advice and assistance to local folks, as well as help them feel less isolated. Students may also be able to comprehend the challenges of people from various generations and backgrounds. This experience can help them have a better knowledge of other people's perspectives in society, as well as grow in maturity and sense of responsibility.[12] This necessitates the establishment of a substantial law clinic in law schools. If law schools are given opportunities to do real work while teaching, their teaching will be more effective, and they will help to ensure that everyone has equitable access to justice. CLE approaches can be used to provide legal education in practically every law school subject. As a result, law school clinics must be improved and oriented in order to create opportunities for different courses to employ CLE methodologies.[13]

Though the aims and objective of each type of clinics are same in principle, based on the actions to be taken, the legal clinics may be divided into three types:

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[12] Archana K., *Practicability of Clinical Legal Education in India- An Overview*, JOURNAL OF EDUCATION AND PRACTICE, 159, 4(26) (2013).

[13] Ajay Pandey, *Social justice, The Raison d'etre of clinical legal education*, JINDAL GLOBAL LAW REVIEW 202 (2020).

1. **Simulation clinic:** Students might benefit from a variety of simulations of legal practise. Cases can be played out from start to finish, from receiving initial instructions to negotiating settlements and appearing in court. These sessions might be given in the form of intensive courses or weekly slots throughout the academic year. Other simulations include negotiation exercises, client interviewing exercises, transaction exercises, and so on.

2. **The In-house real client clinics:** The term "real client clinic" refers to a clinic where clients seek genuine solutions to actual problems. The client could come from the general public. In this method, the clinic is housed in the law school. In law school, it is available, controlled, and regulated. The support can take the shape of only guidance or a combination of advice and assistance. In this type of clinic, clients are interviewed, counselled orally or in writing, and supported in the preparation of their cases. The clinic could serve as either a paralegal service or a full-service law company.

3. **The out-house clinic:** It's a clinic where students can work on legal issues outside of the classroom. These clinics might operate entirely on the basis of giving advice. Such organisations are governed by trade union councils and other non-governmental organisations. The clinic may include placements at solicitors' firms or barristers' chambers.[14]

## III. Trial Advocacy and Legal Education

The student learns to think like a lawyer during the first year of law school. Students are taught how to locate the issue,

[14] See *Supra* note 12, 158

find the law, and then determine how they relate to the facts of the case through the use of the Socratic Method and case analysis. The significance of these teachings cannot be overstated. Growth as a lawyer will be impossible without this fundamental understanding of how the legal process should be carried out.[15] Practical training was not included as a mandatory part of the LL.B. degree programme in India under the legal education model launched in the 1960s. Courses including the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Evidence Act, Minor Acts, and Drafting, Pleading, and Conveyancing were mostly taught through lectures and assessed through memory-based written exams, similar to other courses. As a result of its success in building advocacy abilities, clinical legal education became a very important teaching technique in the law school curriculum. In today's world, practical training is extremely vital for law students, and clinical legal education plays a critical role in adequately preparing students for the bar. As such, the Bar Council of India's efforts to superimpose a certain amount of what is known as practical training in the new curriculum in form of Moot Court, Mock Trial, Court Visit, and legal research and writing, were introduced partially. Part II (B) (Compulsory Clinical Courses) of Schedule II (Academic Standards and Courses to be Studied) of the BCI Rules of Legal Education 2008[16] lists four mandatory clinical courses: (i) Drafting, Pleading, and Conveyance; (ii) Professional Ethics and Professional Accounting System; (iii) Alternative Dispute Resolution; and (iv) Moot Court Exercise and Internship. These four courses are all practical in nature, requiring a skills-based teaching-learning pedagogy.[17]

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[15] A. Michael Gianantonio, *The Practical Use of the Trial Advocacy Course in Today's Legal Education Curriculum*, DUQUESNE LAW REVIEW 50 493 (2012).

[16] http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf (Last Visited on 10 February 2022)

[17] Vijendra Kumar, *Clinical Legal Education During COVID-19 Pandemic: Issues and Perspectives*, ILI LAW REVIEW 245 (2020).

### A. Defining Mock Trial/Trial Advocacy

The presumption of innocence is the cornerstone of our criminal justice system. Not everyone who is accused with a crime is guilty of it, thus students should learn how to defend their clients. They should also be aware of the provisions for a fair trial of the accused. As a result, the courts have been tasked with determining whether or not the individual accused with an offence is genuinely guilty. The mechanism that guides the court proceedings before it reaches that determination must be one that is fair, inspires confidence, and does not create a large escape path for the guilty. As a result, students should be familiar with court procedures, as well as how to prosecute and defend themselves. Students should also be aware of the fundamental characteristics of civil procedure. As such, the goal of this clinical course is to instil trial advocacy skills in the students.

**Mock Trial** is a clinical legal education strategy. Mock trial is the essence of learning the law in practise at the college level. Mock trial is nothing more than a simulation of a courtroom trial. It instructs students on how to apply the law in a criminal court setting. Any criminal case in front of a real court takes years to complete, including the judgement. Mock trial students, on the other hand, are taught to demonstrate the entire procedure in under an hour.[18] The trial court is mainly a fact-finding court. As a result, finding and projecting the facts-pattern is the primary goal of trial advocacy. Because of this concentration with facts, the lawyer's talents and tactics for presenting the case in the best light take precedence.[19] In a mock trial, students take on the role of prosecutor/plaintiff or defence attorney in a trial with created evidence, role-players as witnesses, and instructors or volunteers as Judges. It assesses the participants' ability to argue, handle

[18] https://www.vmslaw.edu.in/trial-advocacy/(Last Visited on 13 February 2022)
[19] http://nlspub.ac.in/wp-content/uploads/2019/05/NLSIU-Book-Series-4_-A-Primer-on-Legal-Practice.pdf (Last Visited on 13 February, 2022)

evidence, and question witnesses. The skill of trial advocacy can be classified into two categories. Individual tasks such as selecting jurors, delivering opening and closing arguments, examining witnesses and abilities that allow an advocate to combine individual activities to generate greater effects and guide circumstances toward the advocate's intended outcome.[20] Without having actually taken a trial advocacy class, most in the legal profession do not realize just how important these classes are to the development of the young legal mind. Good advocacy is essentially learned through practise, observation, and the selection of appropriate techniques, all while adhering to the rules of law and procedure. In fact, effective advocacy necessitates mastering the science of the craft, such as proper questioning tactics, knowledge of the rules of evidence, and knowledge of the substantive law underlying the case theory. Learning the art of the skill, such as recognising the most effective kinds of persuasion, is also necessary for good advocacy. So the dominant purpose of a trial advocacy course is to provide law students with a fundamental understanding of the manner and mode of proof during a trial.[21]

### B. Stages of Trial Advocacy

To understand it more clearly, it is necessary to review the components of a trial by examining the essential activities demanded from the competent prosecutor.

(i) **Preparation for Trial:** Preparation for trial entails a wide range of individual concerns, some of which are more complicated than the action itself. The qualities necessary are substantially the same whether the pre-trial preparation process involves witnesses or the formulation of a lay theory.

[20] https://www.lloydlawcollege.edu.in/incubation-center/trial-advocacy.html (Last Visited on 13 February 2020)
[21] See *Supra* note 16, 495

Fact-finding, issue identification, analysis, research, and writing are all required skills at this first stage of advocacy.

(ii) **Opening statement**: An opening statement is given at the start of the trial. When the trier of fact assumes the adversarial role, the opening statement is crucial because it is here that the trier of fact gets his or her first impressions of the case, as well as of counsel. The opening statement is a fantastic opportunity for an attorney to display legal salesmanship by giving the Judge a sneak peek at what he plans to prove during the trial. According to the standards, it must be logical and consistent, and it must appeal to the Judge's natural sense of fairness. An attorney's initial words should present the case's storey or plot, and they should be convincing enough to generate empathy from the audience. Providing a non-argumentative summary of what the Judge would see, frequently in the context of the attorney's story or theory.[22]

(iii) **Examination in-chief:** Eliciting evidence from one's own witnesses through non-leading questions. Because studies have shown that people best remember the first and the most recent (last) information heard (methods referred to as primacy and recency), the preferred method is to start with an engaging and favourable topic, move through more mundane matters, and to finish on a strong, favourable point.

(iv) **Cross examination:** Cross examination is considered to be the most difficult task amongst the stages of the trail. Advocate is required to work with witnesses offered by the opposing party who may be hostile or uncooperative. It

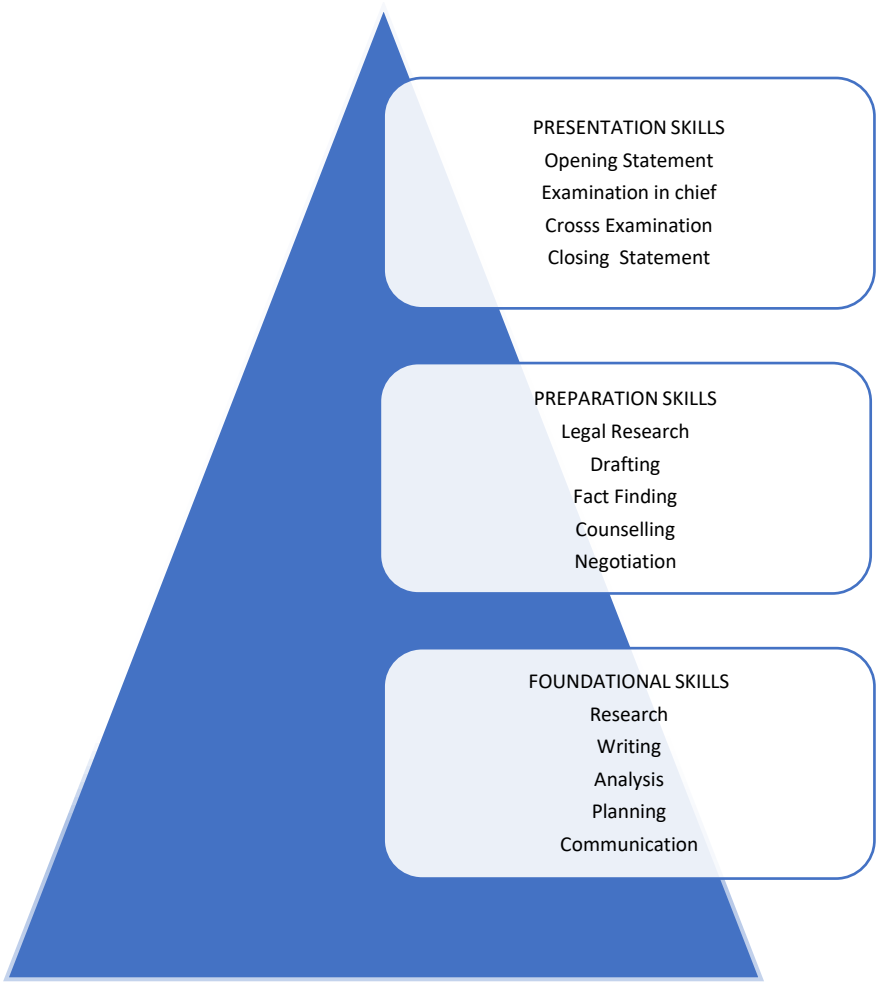
[22] Jeffrey S. Wolfe, *Exploring Trial Advocacy: Tradition, Education, and Litigation*, TULSA LAW REVIEW, 16(2) 214 (1980).

necessitates the greatest ingenuity; a habit of logical thought; clarity of perception in general; infinite patience and self- control; the ability to intuitively read men's minds, to judge their characters by their faces, and to appreciate their motives; the ability to act with force and precision; a masterful knowledge of the subject-matter itself; extreme caution; and, above all, the instinct to discover the witness's weak point.[23]

(v) **Closing argument:** Using argument to persuade the Judges to believe what they have seen and heard, causing them to rule in favour of the attorney's client. The closing argument is an opportunity to maximise the use of persuasion and speechmaking skills. It's just as vital to make a good first impression as it is to make a favourable and enduring impression. As a result, the lawyer's closing argument must clearly state his or her viewpoint on the matter at hand, as well as the reasons why that position should be accepted. It should also incorporate the opening statement as well as the established lay theory.

(vi) **Persuasion:** After having followed the due process of the trial the advocate presents his/her arguments to judges with the goal of persuading him/her of a particular point of view or course of action.

[23] http://delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination%5B1%5D.pdf (Last Visited on 16 February, 2022)




**Source- Jeffrey S. Wolfe, Exploring Trial Advocacy: Tradition, Education, and Litigation**

The pyramid depicts the stages of development of advocacy skills. Foundation skills are instrumental skills and are important for the development of skills required for the efficient lawyering process. Next in the process of development is preparation skills and they lay the basis for the presentation skills in the court. Last, but not the least is the presentation skills and these skills are the medium through which the foundation and preparation skills are

exercised in the court of law. That is the aim and objective of the introduction of this clinical course in the legal education so that students will be able to learn the application of procedural laws in the court room and get to know the nuances of court room exercise; also, to develop and inculcate the skills of Trial Advocacy.

## IV. Concluding Observations

"Learning by Doing" is the motto of clinical legal education. Inclusion of the clinical courses in the law school curriculum is indeed a step towards inculcating and developing lawyering skills amongst students. The more the law students learn in the simulation exercise during law schools, the more they would apply these skills in their practice. The law schools must recognise the relevance of both Socratic method and court room exercise. Clinical courses like trial advocacy not only help the students to learn the background work required for the presentation of the matter before the court of law, also help them to make opening statement, examination in chief and very important the art of cross-examination. Along with they also learn how to tackle the technical or complex questions pertaining to the same in the day-to-day practice. These experiential classes will help the transformation of a law student into a practitioner. What the students have learnt in their fundamental courses, they will be taken ahead by these experiential classes in order to develop lawyering skills amongst them. The skills developed and learnt through these courses will be applied successfully in the preparation and in advocating their future clients. With lot of unique advantages of the clinical course of trial advocacy to the legal education as such it has become a very important and valuable part of the law school curriculum. It provides great opportunities to the students to develop themselves as a lawyer and apply their learnings in actual practice. Now a days these classes have not only have great prominence in law schools but

law schools are also engaged in organising trail advocacy competitions to promote the aim and objective of clinical legal education. The practical lessons learnt in the classes and in the competition will help the development of a future lawyer. Furthermore, clinical legal education is an aid in the development of multifarious skills amongst students such as communication, presentation, legal research, analytical approach, drafting etc. for effective lawyering. The introduction of these courses is a great step in shaping the lawyers of future.

## Chapter - 11

# LEGAL AID CLINIC: AN INITIATIVE TO PUBLIC ASSISTANCE

*Nitesh Saraswat**
*Sachin Yadav***

## I. Introduction

It is a well-known fact that to have a proper access to the justice delivery system everybody needs a representation by the lawyer as it involves technicalities at various stages. The structure of legal aid aims at providing assistance to civilians who could not afford a legal counsel to represent themselves in the court[1].The origin of legal aid concept is based on the principles of natural justice which provides opportunity of being heard, the right to counsel and the right to a fair trial as per constitutional principles. Justice implies fairness and the implicit recognition of the principle of equality.

Access to Justice serves a dual purpose. First being, ensuring that every individual is able to access the legal justice system for redressal, irrespective of their socio-economic status or any other barrier; and secondly that every person should be entitled to equitable treatment as per our legal system.

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[1] JOHN RAWLS, A THEORY OF JUSTICE, 11 (Harvard University Press 1971).

To ensure just and fair justice to the needy persons the legislatures has enacted and enforced the National Legal Services Authority Act in the year 1987. This Act stipulates that the institutions imparting legal education should establish the legal aid clinics to train the students of law with the benefits and utility of legal aid schemes announced from time to time by the State.

The main purpose of legal aid clinics is to give a platform where the civilians can get access to justice. This purpose can be fulfilled by the legal service societies in universities and courts helps in analyzing the legal and social problems in a way of specialized advocacy.[2] The students and volunteers at their early career get to deal with the practical problems which also give them a platform for direct representation and suggest reforms when the problems are identified. Legal reasoning and valuable suggestions are provided to deal with the problems in the existing database by the volunteers and further the data and samples collected by the legal aid clinics also helps in formulating the legislation in the form of bills, acts and policies by the legislative committees of the parliament and also in the administration of the justice.

The legal aid clinics help in providing a qualitative and quantitative data in an informative manner which can contribute either into existing pool of knowledge or exploratory research. It can also try to find out the gap between the objective of the research and hypothesis. The data collected by them works as a source of information collected directly from the society and in framing a research problem in more organized way.[3] It is also a method to know the problems, reactions of the peoples of the society by consulting them the rules and policies are proposed.

[2] REGAN, FRANCIS, THE TRANSFORMATION OF LEGAL AID: COMPARATIVE AND HISTORICAL STUDIES (Oxford University Press 1990)

[3] *Ibid.*

This also helps to know about the intention or attributes of the society which directly helps in Research Methodology.

Legal help is frequently the only option for persons facing life-changing repercussions of litigations in their daily life. Legal services, for instance, have been demonstrated to "substantially reduce the occurrence of domestic violence," according to study. The type of aid provided is determined by the client's legal issue. Legal aid lawyers represent litigants in a number of situations outside of court, lead sophisticated legal proceedings, and frequently argue on their behalf in court aiming at affecting large groups of individuals in similar situations.[4] The purpose of this article is to discuss various stages during the development of legal aid scheme in India.

## II. Historical Background

Legal aid is a welfare provision which has close proximity to achieve a welfare state which flourished across the world in the mid twentieth century after the publishing of a number of literatures on legal aid and its provision. It is basically the provision of a welfare state towards the people who cannot afford legal counsel due to various reasons.[5] An important aspect for the introduction of legal aid was to ensure socio-economic and cultural rights which should be available to all citizens whether publicly or privately.

Mauro Cappelletti, an eminent jurist has propounded that legal aid is an important tool in facilitating access to justice to all individuals by the implementation of social, economic or cultural rights. This perspective caught light in the early half of the 20th

[4] SP SATHE, JUDICIAL ACTIVISM IN INDIA 15 (Oxford University Press 2002).

[5] MP JAIN, OUTLINES OF INDIAN LEGAL HISTORY (Wadhwa & co. 2000 reprint); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, Oxford (1998).

century after the establishment of liberal welfare states in democracies with capitalist economies which prominently focused on individuals as a unit in the State. The primary functionality was that the state acted as service providers and contractors within a market-based system which focused on individuals as consumers in the market. This led to enforcement of rights of an individual.[6]

Between 1950-1960, the system of governance of the welfare state transitioned from social goals to common goals. Individuals pursued their own goals without depending upon the State. The expansion of the role of the welfare state to provide legal aid to individuals emerged as more powerful over professionals and welfare providers.[7] There was the emergence of different Mechanisms through which the people could legally enact their socio-economic and cultural rights. From family law to a wide spectrum of socio economic and cultural rights, legal aid has a long history.[8]

In the 1980s, it was no longer regarded as an important duty of the welfare state to provide classic welfare to people and moreover, the welfare regime was controlled by the private entities in the state. Legal aid was regarded as an industry which was provided by private individuals in which solicitors and lawyers were the service providers while the citizens or litigants were the consumers. These consumers (litigants or citizens) had the liberty to choose among themselves the services of service providers. If the citizens were not left with the option to choose amongst the service providers, the rights were voiced in the forms of dissatisfaction by ways of complaints to the administration. This

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[6] See *Supra* note 2

[7] UPENDRA BAXI, SOCIOLOGY OF LAW, Satvahan (1986)

[8] Abel, Richard L, *Law without Politics: Legal Aid under Advanced Capitalism,* UCLA LAW REVIEW 32 (3): 474–642 (1985) – via HeinOnline. (Last Visited on 18 January 2022)

led to a lot of tension amongst the government as there was no solution to the administrative complaints registered by the individuals. Tensions further aggrieved as States reduced the financial support for legal aid. However, a ray of hope emerged in litigation when provision for legal aid was incorporated in Criminal Procedure Code. Though Our Constitution under chapter IV has provision for legal aid but it was sparingly used.

**III. Clinical Legal Education**

This is nothing but a multi-discipline and a multipurpose education system through which humanistic perspective and idealism is developed with an aim to strengthen our legal system. A lawyer, who has sufficient clinical legal aid education will be able to understand national and social problems and accordingly will be equipped well to contribute to development in a more wholesome and constructive manner.[9]

In India, if we go by the history of the clinical legal aid movement dated back to the era of reform movements in the field of legal aid and legal education starting around 1855. These movements led to the setting up of a number of committees and commissions which provided for the evolution of clinical legal education in India. After the establishment of these committees, the legal education has faced several stages.[10]

In the year 1949, the Bombay Legal Education Committee Suggested the Practical approach and put forward a proposal to include seminars, moot court competitions and group discussions should be made compulsory for students who decided to go for a

[9] Kuljit Kaur, *Legal Education and Social Transformation*, URL:Clinical Legal Education – An Overview (lawyersclubindia.com) (Last Visited on 3 January 2022)

[10] Kamalkar Pandit, *Human Rights and Criminal Justice*, ASIA LAW HOUSE Hyderabad:347 (2010).

career in law. The 14th Law Commission report highlights the importance of professional training which includes the striking of balance between both academic and vocational training is crucial. However, the professional training should be made compulsory only for those who pursue professional legal courses. The next report by the Commission in 1958 implored upon setting up of institutions for legal education so that the overall standard of legal education in India may be improved for the future need. The report further recommended that apart from lectures, other teaching methods such as seminars, panel discussions, mock trials etc. should be included as a part of the curriculum. Although this Report[11] did not talk about improving skills in a direct way, but it focused on the use of teaching methods that helps in developing various skills.

For the first time a linkage between Legal Aid and Legal Education Reform came into limelight with the publication of the report of the Expert Committee on Legal Aid in 1970 which was submitted to the Ministry of Law and Justice.[12]

In National Seminar on Legal Education in 1977 held in Bombay, the Bar council of India, unanimously approved to introduction of the new 5-year course which was made open to students right after their intermediate. It also suggested providing practical training in the present curriculum.[13]Along with this, Bar Council of India kept the cards open for continuance of 3 years course.

University Grants Commission (UGC) also had a major role in the evolution of Clinical Legal Education in India. UGC's reports

[11] 14th report of Law Commission of India, 1958

[12] A brief history of legal aid https://www.legalserviceindia.com/articles/laid.html (Last Visited on 15 January, 2022

[13] Nayadeep, THE OFFICIAL JOURNAL OF NALSA (16) 3:2 (2017).

highlighted the role of legal education in developing law as a humanitarian profession, the law students must be trained in other litigating skills apart from bare provisions of law. The main objective is to understand the practicality of law.[14]

One among the major footsteps in advancement of Clinical Legal Education came in the Conference of 1993 wherein power was given to the Chief Justice of India to constitute a committee for suggesting relevant steps that should be taken to persuade that fresh law graduates are sufficiently and smartly trained before they become eligible to practice in the courts.[15] In view of deteriorating standards of legal education, the Committee also stressed on a move from theoretical approach to practical and simulation based learning techniques so that the students can acquire professional training and acumen ship.

The Bar Council of India (BCI) in its report on NLSIU (The National Law School of India University) issued a circular in1997 in accordance with the provisions of the Advocates' Act 1961 which mandates the practical approach i.e. The clinical legal Education must be made compulsory in the curriculum of all law institutions and universities.

In line with the above-mentioned circular, NLSIU started offering various opportunities in clinical programmes to the students. Compulsory Clinical courses offered by NLSIU include the competition of Client Counselling, Alternate Dispute Resolution methods, free Litigation Clinics and special Clinic. The optional courses included Moot Court competitions, free Legal Services clinics, pro bono and community-based Law Reforms competition.

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[14] SEN A.N, HUMAN RIGHTS (Sri Sai Law Publication, Faridabad:46 2005)

[15] SINHA MANOJ KUMAR, IMPLEMENTATION OF BASIC HUMAN RIGHTS (Lexis Nexis 2015)

Furthermore, NLSIU curriculum incorporates a compulsory complete 100 marks course on clinical legal education for professional ethics and law office management which is delivered by various practitioners in the field. The second report prepared by University Grants Commission with particular emphasis to clinical legal Education provided to improve the Syllabus of the L.L.B. Course. The intended curriculum focuses on the inclusion of various practical subjects which have the potential to be taught clinical legal education which helps in adding the important skills required for a fresher law graduates. The clinical legal Education also introduced in the masters in law program.

**IV. Legal Aid Movement**

The credit for the origin of legal aid goes to the right to counsel and the right to fair trial moment of 19th century in the European Sub Continent. The entire series is a step-by-step procedure. The first step of this series is the "poor man's Laws" which waives off the court fee for poor and needy people and also provides for the appointed duty solicitors for people who cannot afford lawyers for themselves. This scheme was implemented with the expectation that such solicitors would provide a pro bono service. As the result of the same, there was no formal legislation on legal aid due to which the poor litigants relied on the charity of the solicitors.[16] Many countries also enacted several laws which provided that moderate or minimum fees should be paid to the solicitors doing such service. Civil law and common law countries show different approach towards the same. While civil law countries emphasize on the right to legal aid in civil cases, the

[16] R. SWAROOP, LAW RELATING TO LEGAL AID AND LOK ADALAT (ALD Publications 1st edn. 2003)

common law countries emphasized on delivering legal aid to criminal proceedings.[17]

The rise of trade unions and workers' associations in the late 19th century posed a major challenge on the welfare regime of various states across the globe. Europe witnessed the passing of two major laws in this regard which provided for legal rights to the workers in the cases of accidents or illness. The same was done with the aim to curb revolts and industrial actions by the industrial workers. The same also incorporated the provision of legal advices by the workers' union to the workers for their cultural and social upliftment. And hence, states started to provide legal aid by the start of the 20th century.[18]

## V. Developments in Legal Aid

In the 20th century, famous legal practitioners developed the view that it is their moral duty to provide legal assistance to those who cannot afford a legal support due to their low income and financial crunch. This led to a rapid development of legal aid along with progressive principles. Francis Regan in 1999 analyzed the legal situation and stated that the demand for legal aid cannot exceed the supply for legal aid and hence the system of legal aid is not demand driven but supply driven which has led to wide gaps in the perceived needs and actual demands.[19]

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[17] Theodore (20 December 2018). [ANALYSIS | Deep Dive] Community legal aid service: Too much, too soon? (rappler.com) (Last Visited on 26 December 2021)

[18] Gavilan, Jodesz (21 September 2017). No cause more worthy: Ka Pepe Diokno's fight for human rights (rappler.com) (Last Visited on 26 December 2021)

[19] Legal Aid Moment: Its Development and Present scenario, URL: https://www.legalserviceindia.com/article/l361-Legal-Aid-Movement.html (Last Visited on 27 January 2022).

> "Legal service initiatives, such as neighbourhood mediation and legal services, frequently have to close due to lack of demand, while others are overwhelmed with clients."[20]

The primary objective of legal aid is to create more equity in the legal arena. However, it is in a limited quality and its structure makes in inevitable that only those who can have an access to these services are not just a social phenomenon but also a geographic phenomenon.

**VI. Legal Aid in India**

Social condition in India which made establishment of Legal Aid is an important step. India is a developing country. The rapid industrialization and globalization have raised the standard of living of majority of population. The rapid progress in the fields of marketing, industrialization and finance is commendable. However, at the same time this fact cannot be ignored that still there are millions of people who do not have access to basic need like food, shelter, education etc.[21] in such circumstances, it is but obvious that there are indispensable drawbacks in our society due to several reasons like population boom, illiteracy etc. to name a few. The drawbacks have collectively resulted in an increase in poverty and lack of resources for the people. The country is witnessing rapid development. But this development is of the upper class which can easily access the resources due to their financial and social edge. The rest of the country is in their own world of darkness.

But at the same time, India is a democratic sovereign republic which is also a welfare state. This makes it pertinent for

[20] Petitions Versus Anti-Terror Law Now 16: 'It Will Terrorize Our People, Not the Terrorists' | OneNews.PH (Last Visited on 26 December, 2021)

[21] 184th report of Law Commission of India, December (2002).

the government to enact legislatures and policies which provide for upliftment of quality of lives of the needy people by providing them the basic amenities and ensuring that their rights are not infringed.[22] Keeping the above mentioned in mind, the government has enacted various policies which function at spreading awareness among the common people at urban as well as local level by the organization of camps and different programs by different governmental and non-governmental bodies. By understanding their rights and different schemes of the government the people are themselves able to take steps to make their lives better.[23]

Once an individual has realized that his right has been infringed or some kind of wrong has been done against him, the question of redressal of the wrong arises. People start seeking mechanism to report their grievances and get the solutions for the recovery of their rights.[24] The same can be done in India by approaching the courts with the help of the legal counsel. It is at this point that the need of legal aid is sought. Legal aid authorities provide this help by holding legal aid clinics throughout the country with their moto "help the VICTIMS"[25]

The Government has set up legal service authorities which help them in development and application of plans for delivering legal help and in spreading a word about the same. These services involve providing awareness on the mechanism to avail legal aid, appointment of advocates who give free legal assistance to the

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[22] *Id*., at 99

[23] Report of *The Expert Committee an Legal Aid: Processual Justice To The People,* May 1973, Government of India, Ministry of Law, Justice and Company Affairs, Department of Legal Affairs, New Delhi, 1973

[24] JUSTICE P.S., NARAYANA, LAW RELATING TO LOK ADALATS, (Asia Law House 4th edn. 2007)

[25] A lecture was held on November 03,2017 on *"Clinical Legal Education Program and Legal Service Clinic in Law Schools in India-Issues and Challenges"*. By prof. D. P. Verma

litigants and suggesting and assisting government in policy drafting.

## VII. Legislative History of Legal Aid in India

The report of the 14th law commission provided recommendations for the inclusion of the right to have the assistance of counsel at the expenses of the government. Later in the year 1969, another law commission report again emphasized on the need of the right of appointment of free legal counsel as a statutory right. This recommendation was a stronger one which emphasized on placing the burden on the government for the right of representation of the accused in all criminal trial before the Court of Session.

The government appointed a committee for the implementation of legal aid scheme to monitor and to implement legal aid programs on a regular basis in various states and union territories with the purpose of providing free legal aid to achieve its objective enshrined in Article 39-A in the Indian constitution. This committee proposed a model scheme which was as it is implemented by the government. However, over the time, various reviews were taken which pointed out certain deficiencies in the said implemented scheme.[26] The government felt a need to establish the legal services authorities at centre, state and district level so that the legal aid programs can be effectively monitored.

Later on, the burden on the judiciary was recognized. A need for speedy disposal of cases was felt which led to the establishment of Lok Adalat's at all levels of legislation. These Adalat's started function at crude level as voluntary conciliatory bodies which help in the speedy disposal of petty civil disputes without involving legal

[26] S MURALIDHAR, LAW, POVERTY AND LEGAL AID ACCESS TO CRIMINAL JUSTICE (Lexis Nexis 2004).

technicalities. The fundamental problem of these bodies was that their decisions did not have a statutory recognition over the parties. Hence, in order to provide statutory backing to Lok Adalat's, the parliament in the year 1987 introduced the Legal Services Authorities Bill, 1987 which was passed on 24th August 1987 as the said Act.

**A. Lok Adalat**

It is the statutory organization under Legal Services Authorities Act, 1987, which settles the Cases/Disputes pending in court of law in a harmonious manner. Lok Adalat has similar powers as that of a civil court. The award done by it is deemed to be the decree of a civil court and is binding on all parties.[27] The award is non appealable. Any one of the parties to any pending case may file an application to The State Legal Services Authority or District Legal Services Authority and thereafter case is being referred to Lok Adalat for settlement.

**B. Constitutional Provisions**

"Article 21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except in accordance with the method established by law."[28] The right to legal aid is implicit part of right to life under this article.[29]

Article 39A[30] of the constitution ensures that the state shall provide free legal assistance through proper policies, legislation or

[27] *Lok Adalat: Alternative Dispute Resolution Mechanism in India* https://www.legalserviceindia.com/legal/article-1823-lok-adalat-alternative-dispute-resolution-mechanism-in-india.html (Last Visited on 28 January, 2022)

[28] INDIA CONST. art. 21

[29] MH Haskot vs state of Maharashtra (1978) 2 SCC 544. (This decision is discussed in Chapter 5)

[30] INDIA CONST. art. 39-A

schemes or in any other manner to ensure that no citizen's right to justice is denied due to economic or other obstruction.

> *"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."*[31]

## VIII. Functioning of Legal Service Authorities

**Section 4**, Legal Service Authority Act states the functions of the authorities. The act states that the Central Authority shall perform all any of the following functions.

1. To draft legislative policies and principles for the provision of legal services to the common masses in accordance with the provisions of the said Act which includes; supervising the implementation of principles and policies;
2. To devise plans which are both efficient and cost-effective to facilitate legal assistance to those people who require them according to the provisions of the Act.
3. To make judicious use of the legal aid funding to their optimal utilization and to make required re allocations of funds to the State Legal Authorities and District Legal Authorities;
4. Necessary steps must be taken through social justice litigation in the areas of environmental protection, consumer protection or other matters of concern to the needy sections of the society, and to this end, train social workers in legal skills;
5. To organize legal help camps, particularly in slums, rural areas, labour colonies, with the twin goal of imparting education on legal aid to the needy sections of the society

[31] *Ibid.*

regarding their rights and also encouraging in the settlement of cases.

6. To provide grants in aid for particular schemes to different voluntary social service institutions as well as to the District and State Authorities, from funds placed for the implementation of legal services schemes pursuant to the provisions of this Act;
7. To monitor the implementation of legal service programs at regular time periods and provide for independent evaluation of programs and schemes implemented in whole or in part by funds provided under this Act.
8. To develop clinical legal education programs in consultation with BCI to promote guidance to establish legal service clinics in colleges, universities, law schools, and other institutions, and lead the operation of legal services clinics
9. To take necessary steps to enhance legal literacy and awareness among the general public and primarily to empower weaker section of society by making them aware of their rights, privileges and benefits given by social welfare legislation and other enactments.
10. Recognition of social welfare organization working at the ground level, particularly among Scheduled castes and tribes.

**Section 5** of above-mentioned Act emphasizes on collaboration of Central authority with other government and non-government organizations, universities dedicated towards the cause of providing legal services to the poor and marginalized.

**Section 8**

The State Authority is required to act in coordination with other agencies, among other things, and to be subject to directions issued by the Central Authority under this section- In the discharge of its functions, the State Authority shall appropriately act in coordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies

engaged in the work of promoting legal services to the poor, and shall be subject to directions issued by the Central Authority.[32]

**Section 10**

> "1. It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.
> 2. Without prejudice to the generality of the functions referred to in sub-section (1), the District Authority may perform all or any of the following functions, namely:
> 1. Coordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District);
> 2. Organize Lok Adalat within the District; and
> 3. Perform such other functions as the State Authority may (***) fix by regulations."[33]

**Section 11[34]**

According to this of the aforementioned Act, the District Authority is required to work in collaboration with other agencies and to adhere to any directions issued by the Central Authority, among other things. In carrying out its responsibilities under this Act, the District Authority shall, where appropriate, work in collaboration with other governmental and non-governmental organizations, universities, and other organizations dedicated to advancing the cause of legal assistance to the poor, and it shall also be guided by any written directions issued by the Central Authority or the State authority.[35]

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[32] The Legal Service Authorities Act, 1987, s 8.
[33] The Legal Service Authorities Act, 1987, s 10.
[34] The Legal Service Authorities Act, 1987, s 11.
[35] N.R. Madhava Menon, Legal Aid and Justice for the Poor, pp 344, para. 2

Committee for Implementing Legal Aid Schemes (CILAS) was created by the Government of India under the supervision of Hon'ble Justice P.N. Bhagwati. The CILAS main purpose is to implement Legal Aid Program on uniform basis in all the State and Union territories. CILAS also implemented a model scheme which is sponsored by the Central Government.

Object of the aforementioned enactment - All laws are made for all men - common or rare - in our democratic system. A man on the street is what we mean when we say "ordinary man". A man, who may or may not have any social status, office, post or rank. He's a common citizen with reasonable and legitimate expectations. He could be a cobbler, sweeper, baker, butcher, priest, or soldiers; all are examples to this end.[36]

The amount to which a legal system and its efficacy are valuable to the ordinary man must be gauged or quantified. The failure of the law to protect the common man is due to the unwillingness of other people who are privileged and have a higher social rank to change their minds or perspectives. Society has no emotional integration between the haves and have-nots. Laws alone will not improve society. The right to equality and the right to life has its impact on the nature, the scope and content of the right to legal aid.[37] Social reforms are carried out by virtuous, wise, and morally upright leaders in society, not by laws.[38] No attempts must be taken on behalf of the State or their agencies to propagate moral instruction in order to support science and spirituality prior to crafting the laws or while enforcing them. In the absence of any effort in the right direction, the average man is deprived of the

[36] http://www.archive.india.gov.in/citizen/lawnorder.php?id=10 (Last Visited on 2 February, 2022)

[37] Suk Das v. Union of India, AIR 1986 SC 991

[38] *Id.*, at 404

benefits of laws passed for him that do not reach him due to inefficient bureaucracy and bad management.[39]

At the civil front, Order XXXIII. Rule 18 of the Civil Procedure Code, 1908 states that both the federal and state governments shall introduce further measures as they deem proper for providing free legal aid to people who have been granted the right to file cases before the judicial court.[40] The National Legal Services Authorities Act, 1987 revolutionized the legal aid industry.

It provides for the establishment of legal services authorities to provide competent and free legal assistance to weaker sections of the society,[41] to make sure that opportunities for accessing justice are not denied to any citizen due to their economic or other disabilities and to establish Lok Adalat's which shall ensure that the legal system functions in a way that promotes justice to all on an equal basis.[42]

Civil legal aid is legal help and advocate service for people who are poor or needy in legal cases that is not only concentrated to the criminal justice system.[43] Accessing the justice system without an efficient lawyer can be impossible for those who face civil legal issues such as foreclosure, unjust evictions, wrongful rejection or domestic abuse of social aid. Quite contrary to the Sixth Amendment, there is a right to counsel in criminal trials, however, the courts in the great majority of civil matters have not recognized a right to counsel as a statutory right. This keeps justice at a

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[39] *Id*., at 404-406.

[40] Upendra Baxi, *The Supreme Court under Trial: undertrials and the supreme court*, 1 SCC (Journal) 35 (1980); TN Singh, *The Hussainara Case: Some Socio- legal Aspects of Pre-trial Detention,* 1 SCC (journal) 1 (1980)

[41] Dr J.S. Singh, *Right to legal aid. A human right prospective*, NAYA DEEP 8(3) (2007).

[42] Richard Morehead, *Pasco Pleasance, Access to Justice after Universalization*, 30 JOURNAL OF LAW & SOCIETY (2003).

[43] Utpal Parashar, *Justice Delayed is Justice Denied*, The Hindustan Times, 11-15 Febuary, P-1

pedestal which is out of reach for poor individuals[44] and violates a core principle of the welfare state "that a person's wealth should not dictate the sort of justice they receive."[45]

Legal help programs work to make sure that the legal system is working on the principles of equity and good conscience. In the United States, around 47 million people, which includes at least one in every five children, live in or near poverty. Legal aid organizations defend legal rights of millions of needy people in areas such as consumer, housing, education, family and employment as well as provide access to services for people from different walks of life, which includes veterans, children, the elderly, domestic violence victims, and the specially abled.

## IX. Functions of Legal Aid

Legal help is frequently the only option for persons facing life-changing repercussions such as losing their house, job, or custody of their children. Legal services, for example, have been demonstrated to "substantially reduce the occurrence of domestic violence," according to study. The type of aid provided is determined by the client's legal issue. Legal Services Authorities Act 1987 mainly focuses on providing legal aid to filing or defending a case i.e., litigation-oriented assistance.[46] Legal aid lawyers represent litigants in a number of situations outside of court, lead sophisticated legal proceedings, and frequently argue on their behalf in court aiming at affecting large groups of individuals in similar situations.

[44] Kerala Legal Aid to the Poor Rules 1957, rule 8

[45] Challenges and solutions to free legal aid, URL: https://blog.ipleaders.in/challenges-solutions-free-legal-aid/ (Last Visit on 15 February, 2022)

[46] S 12 of LSAA confines entitlement to legal assistance to those filing or defending a case.

## X. Legal Aid for whom

Though there are dedicated lawyers who give their careers to serve the needs of poor and needy people, most legal aid programs are extremely underfunded, and they are very often forced to prioritize helping the most disadvantaged clients on a limited number of matters affecting their pressing legal needs.[47] Despite this, it is anticipated that almost half of the people who are qualified for legal aid are turned down. Those who are provided with legal aid are most often given very minimal guidance and help.[48] Those who are turned down must usually rely on self-help resources and legal knowledge, but even those are not accessible to everyone who needs them. The state sponsored legal Aid is benefitted to those who are not represented.[49] To the extent that legal rules and principles are modified in favor of welfare recipients, consumers, tenants, and other classes, everyone in class, even those not eligible for free legal services, is benefitted.[50]

## XI. Legal Aid

"Legal Service" includes “the rendering of any service in the conduct of any case or other legal proceeding before any court, other authority or tribunal, and the giving of advice on any legal matter.” According to Section 2(1)(c) of the Legal Services Authorities Act, 1987 (hereinafter referred to as "the said Act"), the basic object of enacting the aforesaid Act was to provide free and competent legal services to the weaker section of society. Our fundamental guarantee of social, economic, and political justice is written in the preamble of our Constitution. The inclusion of Article 39-A in the Directive Principles of State Policy in 1976 obligated the

[47] (1986) 2 SCC 407

[48] Hussainara Khatoon vs. State of Bihar (1995) 5 SCC 326

[49] Roger C Cramton, *why legal service for the poor?,* 68 JOURNAL OF THE AMERICAN BAR ASSOCIATION 550-553 (1982)

[50] *Id.,* at 553

state to provide free legal aid in order to achieve justice on an equal footing.

Our legal system is based on the notion that all citizens have equal access to legal remedies. A core human right is to have access to affordable and timely justice, prevent abuse of power and violations of rights and ensure equal access to justice.[51] However, in practice, all legal services have gone to the highest bidder. The greatest quality counsel is given to wealthy individuals and major organizations.[52] There should be a system of judicial administration that is accessible to the poorest people. Equal access to the law for the rich and the poor is critical to the rule of law's survival. As a result, it is critical to give competent legal counsel and representation to all persons who are facing threats to their life, liberty, property, or reputation but cannot afford it.[53] Legal aid is required in a variety of ways and at different stages for receiving advice and settling issues in courts, tribunals, and other bodies.[54] It has a lot of different sides to it. The increase in litigation in Courts and other forums, as a result of the explosion in population, vast changes brought about by scientific, technological, and other developments, and the overall enlarged field of human activity reflected in modern society, necessitates the service of competent persons with expertise in law at various stages and at various forums or levels.

Free legal assistance is unquestionably beneficial to the needy and was established with a noble goal in mind. Nonetheless, it has proven fertile ground for the spread of corruption. It is normal practice to provide free legal assistance in exchange for a fee. Free legal service is an inalienable element of fair, just and reasonable

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[51] Report, '*Legal aid cannot be substitute or a panacea for the ills of our system of justice*', 16 (1973)
[52] *Id*., at 10
[53] M.H. Hoskot v. State of Madras (1978) SCC 81
[54] *Ibid*.

procedure, because without that a individual who is facing disabilities, economic or otherwise would be deprived of the chance to access justice.

Beyond that, the desire to profit on the helplessness of the victims is always present. The fact that entrustment of cases under the programme has become a case of distribution of largest among the favourites, much as our governments are infamous for distribution of licenses, tells volumes about the system. Many elements influence distribution, but the most important are reason and the ability to provide the commodities. Expectedly, the quality of aid suffers as a result of the conditions, to the detriment of the beneficiary and, of course, Justice. As a result, the entire goal is defeated.

**XII. Schemes of DLSA**

There are various schemes run by Delhi State Legal Service Authority. A few of them are as follows:

1. Central Scheme for assistance to civilian victims/family of victims of terrorist/communal/LWE violence and cross border firing and mine/IED blasts on Indian Territory.
   The aim of this scheme is to provide assistance to civilian who are victims of terrorist violence including militancy, insurgency, communal/LWE violence and cross border firing and mine/IED blasts on Indian Territory.

2. Delhi Victims Compensation Scheme 2018
   The objective of this scheme is to adequately understand the nature and extent of victimization and meet the financial disparity among the citizens. The scheme primarily functions at safeguarding the rights and rehabilitating each victim in the State.

3. Delhi Witness Protection Scheme 2018
   The scheme aims at ensuring that the stages of criminal justice system are not compromised and trials of criminal offenses are not prejudiced because the witnesses are intimidated or frightened to give false testimony without protection from violent or other criminal recrimination.

## XIII. Proactive Role of Judiciary

1. In Hussainara Kathoon v. Home Secretary, State of Bihar[55]
   The Supreme Court had urged the government to develop a comprehensive plan for providing legal aid to the poor, which was rejected by the government. Following were the Supreme Court's observations:

   *"We would also like to take this opportunity to impress upon the Government of India, as well as upon the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man."*

2. In the case of Rhem v. Malclom[56] the Court held:
   "The state cannot be permitted to deny an accused person the constitutional right to a speedy trial on the grounds that the state lacks adequate financial resources to incur the necessary expenditures for improving the administrative and judicial apparatus with the goal of ensuring that the accused receive a speedy trial. The state may have financial constraints and expenditure priorities, but the law does not permit any government to deprive its citizens of their constitutional rights on the grounds of poverty or other similar justification."

[55] AIR 1979 SC 1369
[56] 377 F. Supp. 995 (SDNY 1974)

3. In Abdul Hassan v. Delhi Vidyut Board[57] Delhi High Court observed that:

> *"It is emphasized in Article 39A that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to ensure that opportunities for obtaining justice are not denied to any citizen because of economic or other disabilities. In accordance with its purpose, Lok Adalat is established to ensure that the administration of justice is based on the principle of equality of opportunity. The provisions of the Act, which are based on indigenous concepts, are intended to serve as a complement to the legal system. They will go a long way toward resolving the dispute at little or no cost to the litigants and with the least amount of delay possible."*

The Legal Services Authority Act, 1987, was enacted in response to this situation by the legislature. In accordance with its purpose, Lok Adalat is established to ensure that the administration of justice is based on the principle of equality of opportunity[58].

4. The Supreme Court of India in State of Haryana v. Smt. Darshana Devi[59] has stated that:

> *"no state appears to have framed rules to give effect to the benignant provision of legal aid to the poor as provided for in Order XXXIII Rule 9-A of the Civil Procedure Code. Neither Parliament nor the general public are pleased with their situation. Even after a law has been enacted for the benefit*

[57] AIR 1999 DLT 6400

[58] *Ibid.*

[59] AIR 855, 1979 SCR (3) 184

*of the poor, the State does not bring the law into effect if the condition sine qua non has not been met by the state."*

The court further reiterated that it is the public duty of each branch of government to uphold the rule of law and uphold the Constitution by enacting rules to carry out legislation intended to benefit the poor and those who are less fortunate.

5. Moni Mathai v. Federal Bank Ltd.
   The Kerala High Court noted in Moni Mathai v. Federal Bank Ltd.[60] that:

   *"The Lok Adalats are required to adhere to the principles of natural justice, equity, fair play, and other legal principles. All of these unfortunate disputes could have been avoided if the Committee had taken the time to serve notice on the petitioners and obtain a written statement containing their version of the events before presenting it to the Lok Adalat in the first place. The Lok Adalat's must also remember that their responsibility is not to dispose of cases in some manner, but rather to settle cases amicably."*

6. In Chandra Bhavan Boarding and Lodging, Bangalore V. State of Mysore[61] The Constitutional Bench of the Supreme Court held that *"While the rights conferred under Part III are fundamental, the directives issued under Part IV are fundamental in the governance of the country."* On the overall, there is no conflict between the regulations contained in Part III and those contained in Part IV. These two things are both complementary and supplementary to one another.[62]

[60] AIR 2003 Ker 164 at 170
[61] AIR 1970 SC 2042 at 2050
[62] *Ibid.*

## XIV. Feedback from the Interviews with Stake holders

The researcher has done interviews of the various volunteers of Legal Aid Clinic who are presently working as Advocates and helping the society in whatsoever form they can help.

**Name: Nisha Rani,** Advocate practicing in family, civil and criminal matters in Supreme Court, Delhi High Court and Subordinate Courts.

Question: how will Legal Aid help India in the future?

Answer: India being a developing country is facing a lot of changes like in its communication methods, infrastructures, method of working and way of living as well. People are now getting aware from their rights and duties provided by the constitution as well as of their fundamental human rights through easily available technology. So, whenever someone's rights get violated or someone tries to cheated on others, citizens know the right place, where they have to go for justice, but some of them is not able to afford the litigation charges, so the legal aid is the only way through which they can get justice easily and within time without spending much resources. India is a country of common man/poor people, and rich class suppressed them easily, so legal aid can help these poor people of India by showing the right way to get justice with affordable expenses and free of cost as well.

Question: What do you understand by Legal Aid?

Answer: According to me Legal Aid is not just a way to get free legal services. Legal Aid no doubt helps the poor to get free and affordable litigation, but it helps each and every citizen by making them aware of their legal rights, constitutional rights and legal procedure, by spreading words through the legal awareness

camps, digital media or print media. Legal awareness camps help to reach out to each and every one and get them aware of the government schemes, policies and projects as well.

Question: How Helpful is Legal Aid?

Ans: Legal Aid is helpful in so many ways, let me explain you the basic one, legal awareness camps in remote areas, Citizens have no need to go to legal house or courts, legal aid camps in the remote areas and rural or backward areas is the best help Legal aid is providing, door to door services of legal aid camps is helping people to get major information without suffering and going anywhere else.

Question: How Can one Access Legal Aid?

Ans: We can access legal aid online and offline in both ways. We can go to the legal services authority office of the area as well as it is located in most areas according to jurisdictions, or you can post your application with fill details.

Question: Legal aid similar to pro bono services?

Ans: Legal Aid is sponsored or funded by the State or Central Government and pro bono is the personal choice of individual that he will give legal advice for free or not. So both are different.

Question: Do people have enough awareness regarding legal aid?

Ans: People are aware of the legal aid or Lok Adalat. But they are not fully aware of the services they can get through legal aid. Legal camps are helping a lot of people but still need to reach in quality of work more than quantity.
Question: why is the Legal Aid Clinic important for law students?

Ans: It is important for law students, as they get the opportunity to do field work, thereby providing legal solutions to the people. It's the best practice for law students to get familiar with the legal life.

**Name: Geetanjali Tiwari,** Advocate practicing in banking, civil and criminal matters in a self-established law firm, in Delhi High Court and Subordinate Courts.

Question: Is legal aid and pro bono service similar?

Answer. Legal aid and pro bono services are two very different things. Legal aid comes from NALSA which is the National Legal Services Authority. There are similar authorities on district and state level as well. While pro bono is private taking up of cases free of services for underprivileged class of people. In pro bono you do not charge the client.

For legal aid, you have to approach the authorities which provide free legal aid to women and reserve categories irrespective of their income criteria and to transgenders and senior citizens, the income cap is 4 lakhs while the cap is 3 lakhs for men from general category. For this, you need to carry your aadhar card, income certificate, any other documents, complaint copy and other related and required documents.

Question: Do people have enough knowledge about legal aid?

Answer. Yes. There are several programs run by NALSA, DLSA etc. which makes people aware.

Question: How will legal aid be helpful?

Answer: It will be very helpful as no person will be left unrepresented before the court in present and future as well.

Question: How does the legal aid clinic help in improving your skills in advocacy?

Ans: Explaining the Judge who already knows the law is not that much of a big deal rather to the general public is a big task. The main purpose of advocacy is not to just earn money rather the duty is towards the society to educate them about their rights.

Question: why is the Legal Aid Clinic important for law students?

Ans: Main purpose is to educate people, what all laws are there, what people can do, so it's very important for law students to know about Legal Aid.

**Name: Kapil Pant,** Advocate Practicing in Environment matters, NCLT, DRT, matters in self-established law firm and Delhi High Court and Subordinate Courts.

Question: How is legal aid helpful?

Answer: As such the legal structure in our country is complex, so to resolve their problems legal aid is really helpful. Legal aid makes one award about his right and provides him necessary facilities to go ahead with attaining his right to which he is devoid of. If one is unable to represent himself before the Court of law, legal aid can resolve this problem. Because the court is the guardian of our fundamental right and legal aid is the tool to secure all this.

Question: How will it be legal and help India in the future?

Answer: As India is a developing country, legal aid could be having a bright future. Because a large number of people still live in the backward geography where it is necessary to make them award legal aid. As such various programmes go on, but at least people

participated in those programmes. Therefore, it is needed to make more and more people of India aware of legal aid.

Question: Is legal service similar to pro bono service?

Answer: Legal which is provided by the institutions or state while pro bono services is provided by the individual lawyer or law firms, Pro bono services and where an advocate does not take any fee with regard to his services while legal aid is the duty of the state under Article 39 A of the Constitutions of India by the State. Additionally, one law student if PLV while pursuing his law degree definitely he will turn to pro bono lawyer ahead.

Question: Do people have good enough awareness regarding legal aid?

Answer: Though various camps pertaining to legal and awareness are organized by the legal authority of the state. As per my understanding, an ample number of people do not know more about legal aid. But legal aid exists, they come to know after the hard efforts. One thing which is needed is that people must have faith in the advocates of the legal aid process.

Question: How can one access legal aid?

Answer: one can access the legal aid by approaching the legal services authority which has its Centre in the court premises of our country. However, expansion of the legal services centre even beyond the court is needed. One who is desired to take legal help can access these centers and get the help.

Question: What do you understand by legal aid?

Answer: As far as legal aid is concerned from the common man perspective who does not know more about law is that he gets the

help from the Court when he is in trouble from any angle in his life pertaining to legal matter. This legal help would be of various types. As such it could be to make him aware about his right, responsibility and obligation towards the society.

**Name: Srishti Sharma,** Advocate practicing in civil and criminal matters in Delhi High Court

Question: What do you understand about legal aid?

Answer: So, for the first question, legal aid as the name suggests is the legal assistance given to those who are not able to afford legal counsel or helping those who are unable to access the courts and other legal forums due to unawareness.

Question: How is legal aid helpful?

Answer: Legal aid is helpful primarily to Students pursuing law as Students get first-hand experience at ground level and they also get an exposure to deal with the practical legal problems.

Question: How can one Access Legal Aid?

Answer: Legal aid clinics and various other societies put up camps in various areas and people living in the vicinity can come in contact with the volunteers. Or the state legal service authorities can be approached which are providing free legal assistance to the needy.

Question: Is legal aid and pro bono service similar?

Answer: According to me, Legal aid is similar to pro bono work because in pro bono we also work to help the needy without aiming for earning profits.

**Name: Gaurang Kulshreshtha,** Advocate practicing in High Court of Judicature at Allahabad

Question: What do you understand about legal aid?

Answer: As the Directive Principle of State Policy under Article 39A envisages that there shall be endeavour to promote Justice through the operation of the Legal System. So, the Legal Aid is a tool to secure that legal system which is based on equal opportunity and where one is not denied justice merely upon his economic or social status. If we put it simply, Legal Aid is a form of assistance extended by the Judicial System to those who are unable to secure ends of Justice owing to their financial status or social status.

Question: How is legal aid helpful?

Answer: It is not only helpful but it is inevitable for any Justice Delivery System in order to ensure that handful of resourceful people only doesn't reap the benefits of it but the protection is also extended to masses at large. Every society operates in a Pyramid pattern wherein there are few well of people who are at the top and for whom every access is handy while the major chunk of population which constitutes the base of Pyramid is having scarce resources and for whom every facility is hard to access. Legal aid assures that benefits and protection extended by constitution or other statutes trickle down to even the last person of the base of the pyramid.

Question: How can one access legal aid?

Answer: Legal Services Authority Act, 1987 is a light in that direction. It lays down the hierarchy of systems and procedures in that regard. Act lays down that there shall be a National Legal Services Authority followed by State Legal Services Authority and

District Legal Services Authority. Entitled person like Person from SC/ST, Woman, Person earning less than the prescribed annual earning, victim of genocide/ethnic violence etc. may approach the Legal Services Authority directly or through Para Legal Volunteers (PLVs) appointed by Legal Services Authority.

Question: Is legal aid similar to pro bono service?

Answer: Legal Aid is a larger scheme whereas pro bono services are part of that larger scheme.

Question: Do people have good enough awareness regarding legal aid?

Answer: Although Legal Services Authorities through their awareness programs are trying to educate the masses but when it comes to India's context everything is merely a drop in the ocean, considering the sizeable populates of India. Gradually awareness is increasing amongst masses but at the same time some stakeholders with some vested interests are also creating regressive awareness against Legal Aid Programs due to which positive awareness is facing a bumpy road.

Question: How will legal aid help India in the future?

Answer: It will increase the faith of common people in Judicial System. It will lead to more equitable and fair justice system.

Question: How the legal aid clinic helps in your improving skills in advocacy?

Answer: Legal Aid Clinics works like simulators for lawyers or would be lawyers in respect of Client Counselling and Legal Consultancy. It hones the advocacy skills.

Question: Why legal aid is important in every law college?

Answer: Advocacy unlike other professions is a Noble Profession. In this profession sense of empowering people comes first than any monetary benefits. Legal Aid Service helps the would-be lawyers to learn and imbibe this trait of profession when they are still in making.

**Name: Shivam Yadav,** Advocate practicing Civil and Criminal Matters at Delhi High Court and Subordinate courts, and courts in Uttar Pradesh.

Question: What do you understand about legal aid?

Answer: Legal Aid means to provide legal awareness to common people of society about their individual rights and right as a citizen of state.

Question: How can one access legal aid?

Answer: Anyone can access legal aid by contacting me anytime.

Question: Is legal aid similar to pro bono service?

Answer: Legal aid should be pro bono service. It's just like medical services, you can get it free, but not in every case.

**Name: Akhilesh,** LL.M. from Indian law institute New Delhi during interview he acknowledged the important role of legal aid clinics established in the institutions imparting legal education in imbibing among budding lawyers the importance of social service after becoming lawyer.

According to him, the legal aid clinic is a group of enthusiastic volunteers who are well read, well aware and passionate about furthering the cause of justice.

The legal aid clinic organizes seminars, sensitization drives, educational camps, and other such initiatives. The legal aid clinic identifies the litigants in need of help. They are further helped in pursuing their cases.

One of the problems that most litigants face is that they don't understand the proceedings and hence such a judgment, trial and proceeding could never resemble justice as justice must not be done, it should also seem to be done. Hence, it's really important to educate the rustic and illiterate litigant which is a job really well performed by a legal aid clinic.

**Name: Ankit Kumar,** LLM from NLU Delhi stated as under:

Question: What do you understand by legal aid?
Answer: Legal aid is aid provided to people who are can't afford legal assistance and representation and can't access the justice administration system.

Question: How is legal aid helpful?

Answer: It is very helpful as it provides Legal assistance to individuals who otherwise can't afford to have legal assistance. It is a welfare provision by the state to people who otherwise cannot afford counsel from the legal system.

Question: How can one access legal aid?

Answer: you can approach the state legal service Authorities by visiting the office of authority or you can post your application with your brief details for seeking the legal Aid.

Question: Is legal aid similar to pro bono service?

Answer: Pro bono means a lawyer gives a legal assistance without any charge – which is different to legal aid. Under legal aid services lawyers' time is funded by the Government, whereas pro bono work is legal advice provided free of cost by him.

Question: Do people have good enough awareness regarding legal aid?

Answer: I don't think people have any awareness of legal aids. People are afraid of courts and don't want to go anywhere near police and advocates. People think of them as trouble. But in name of free people do visit legal aid clinics organized by various organizations in friendly environments.

Question: How will legal aid help India in the future?

Answer: In future with increasing literacy rate legal aid will be much more beneficial. More and more people will start approaching legal services authority as they become aware of their rights.

Question: How the legal aid clinic helps in your improving skills in advocacy?

Answer: Legal aid clinics give practical knowledge to paralegal volunteers. Many students' wants to help people and society, they can also do so by enrolling as paralegal in legal aid clinics. Legal aid clinics help immensely in improving skills in advocacy.

Question: Why is legal aid important in every law college?

Answer: The law students have enthusiasm to provide legal services through legal clinics. Thus, to fulfil the twofold purpose of providing

the legal services to those who are economically weaker in society and cannot have direct access to it. And, they transfer the energies of students in contributing the society.

## XV. Conclusion

The collective conclusion that is derived from the interviews of the experts in this field is that most of the lawyers, law students and even litigants. An idea on legal aid is available to all and often the uneducated Indians are well aware of the provisions of legal aid in India. It is further evident that legal aid has been in culture after the establishment of legal aid cells at state level in various NLUs and government colleges. The conduction of client counselling, mediation, competition and organizing Lok Adalat's, etc. in colleges have contributed a lot in spreading the awareness among students about these schemes.

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## Chapter - 12

# CLINICAL LEGAL EDUCATION: FROM ACCESSING JUSTICE TO ACCESS TO JUSTICE

*Jasper Vikas**

## I. Introduction

Essentially, the idea of introducing Clinical Legal Education ('CLE') in the LL.B. course curriculum was to inculcate the practical Advocacy skills amongst the Law students, *firstly*, by making them to visit the Courts along with their academic pursuits, *secondly*, by allowing them to join the Lawyer's Chamber as an intern and *thirdly*, by exposing them to the various types of 'Law Clinics', which helps them in grooming not just as a 'practically trained legal mind' but, also as the socially relevant lawyers[1], who will not be aloof from society's issues and challenges. And, therefore, right from its inception, CLE has moulded itself into various formats, keeping in mind the changing needs of the society. There are four types of Clinics[2] which have been mandated by the Bar Council of India[3] to be included in the

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1 Socially Relevant Lawyers means the Lawyers who work for the social justice issues such as Lawyering for the slum dwellers' housing rights, LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer, etc.) rights, Minority Rights, Disability Rights, Rights of Women, Children, Migrant persons, Refugees, etc.

2 The four Clinics are (i) Alternative Dispute Resolution (ADR) (ii) Pleading and Conveyancing (iii) Professional Ethics and Bar and Bench relations and (iv) Moot Court exercise and Internship.

3 Bar Council of India is a statutory body, which regulates legal education in India.

Syllabus of LL.B. by the institutions imparting Legal Education in India so that the students of Law are brought up as social justice lawyers.[4] CLE is necessitated to be an important tool in the discourse of 'access to justice' as it has the capacity to effectively reflect on both, social and legal issues. In the recent past, CLE has seen a phenomenal growth, especially in National Law Universities, where, in past many years, the clinical programmes have not only been recognised[5] as one of the most essential aspects of legal education, but, because of their flexible and contemporary approach, they have become the best tool for transforming, 'accessing justice' to 'access to justice'. Project 39A at National Law University Delhi ('NLUD') is the classic example of the same, where students are trained to visit jails and take interviews of the accused persons facing death penalty. There are various other Centres also, which are working on bridging the gap between the law and society.[6] The Law students from their early years of legal education itself get exposed to these Centres, which helps them in grooming as a social justice lawyer. One cannot forget that the maximum brunt of Pandemic (Covid 19) was faced by the most vulnerable and marginalized classes of the society, in respect of both, civil and criminal access to justice[7]. In response

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[4] Law schools are assumed to be the torchbearer of the Public Legal Education and their Clinical courses are meant to build, a more legally literate society; See RICHARD GRIMES, PUBLIC LEGAL EDUCATION: THE ROLE OF LAW SCHOOLS IN BUILDING A MORE LEGALLY LITERATE SOCIETY, 2 (Routledge 1st edn. 2020).

[5] NLUD has quite a few prominent chairs on, IPR, Access to Justice, Consumer Law, Professional Ethics, etc., which shows the importance of Clinical Legal Programmes in Law Schools.

[6] At NLUD, various prominent Centres are running, which aim to work towards the society by disseminating the legal information to the last in the queue, to name a few, Centre for Law and Urban Development, Centre for Human Rights and Subaltern Studies, Centre for Communication Governance, Centre for Tax Laws, Centre for Comparative Law, Centre for Environmental Law, Policy and Research, Centre for Criminology and Victimology, Centre for Constitutional Law, Policy and Governance, etc.

[7] Virtual Courts have limited the access of the Vulnerable and Marginalised class of the society to justice, both, due to non-access to technological devices and also due to lack of

thereto, the law schools have re-designed their CLE programme, to work towards, the access to justice and for which, they modified the contents of the CLE programmes to cater the needs of 'access to justice'. In this way, CLE has shown both, its importance in imparting reflective legal education and also its flexibility in adapting new approaches to deliver 'access to justice'.[8] Access to justice is just not a mere directive principle[9] enshrined in the Constitution of India, but, is also the key objective of the Indian Constitution.

## II. Practical Training and Access to Justice: The destination so near, yet so far

Defining 'Justice' in the context of 'Access to Justice' is not an easy task, as the realm of Justice generally covers the equity and fairness.[10] Though there are various connotations attached with the term 'social justice', such as fulfillment of the basic human needs including, food, shelter, and clothing, education and health care, protection of human rights, living with non-discrimination, freedom of expression and moments, etc. There is fairly a long scheme of topics to be addressed under the context of social justice. But, this definition of social justice is not suitable when we talk of 'access to justice'.[11] For example, for some, not providing free vaccination to the new born, is injustice done by the State and for others, it is acceptable and are not aggrieved

accurate information. It has also increased the cost of justice multi-fold, because the focal point of starting was access to lawyer, and access to lawyers has also become limited due to Covid 19 advisories.

8 Jef Giblings, *Clinic in the times of Covid 19*, JINDAL GLOBAL LAW REVIEW 11 (2), 229-249 (Springer) (2020).

9 Article 39A of the Constitution of India, directs the State to provide, free legal aid.

10 Though everyone has different perspectives when it comes to the meaning of fairness and equity.

11 Kathryne M Young, *What the Access to Justice crisis means for legal education*, 11(3), Thinking About Law and Accessing Civil Justice, Article 9, U.C. IRVINE LAW REVIEW, 811 812 (2021).

with the same. The moot question here is then, as to whether free vaccination is a part and parcel of the issue surrounding 'access to justice' or is it a 'social justice' construct? The law students are exposed to law issues more than any other issue prevailing in the society. Thus, at some level, they are also exposed, either implicitly or explicitly, to such social justice issues. Then comes 'justiciability construct', which according to Kathryne Young is a narrower degree than the 'social justice' construct as it addresses the issues pertaining to access to justice, which are actionable under law.[12] For example, if the State has expressly provided the provisions under law to provide free vaccination to the new born and supposedly, there is a new born, who has not been provided with the free vaccination as the State has no mechanism to vaccinate the new born, then such cases fall within the four corners of issues dealing with 'access to justice' and ask for a Law Clinic's role. But, if there is no law regarding this, then the issue pertaining to 'access to justice' does not exist[13], though the issue still very much falls under the domain of 'social justice' construct. Law Clinics working for 'access to justice' therefore, are involved in extensive research in 'justiciability construct', meaning thereby that if the law is providing access to any goods or services, then in that case, any non-access to them, shall become the scope of the 'Law Clinics'. This also means that the difficulty for the Law Clinics is in identification of such issues, which falls under the domain of justiciability construct and therefore, under the domain of 'access to justice'. 'Health', 'Family Safety and Security', 'Housing', etc., are those fundamental issues, which are the domain of justiciability construct. The unprecedented pandemic has given an opportunity to the students of the CLE programmes

[12] *Id.*, at p. 813.

[13] For a developing nation like India, it is necessary that enactment of law is followed by implementation mechanism, which will ensure that justice is made accessible to all as the law does not discriminate between any segment of the society. Any violation of rights enshrined under the law, defeats the purpose of law and at this stage, we can appreciate the importance of a lawyer who can approach the Court for implementation of law.

to adapt themselves to the changing times and to react and work in a feasible way to ensure access to justice. Even otherwise, the best reflective legal learning comes from the uncertainty and uniqueness of the situation, which makes 'law as lived' experience.[14]

### II.1 Role of Law Students or Lawyers in 'Accessing Justice and 'Access to Justice'

The fundamental question here is as to whether the students of law or lawyers are the appropriate persons who can be helpful in achieving the goals of 'access to justice'.[15] And, the answer primarily is in affirmative, because the whole issue surrounding 'access to justice' starts with the core issue, being 'access to lawyer' or 'access to law'. And, therefore, Law Clinics, play a crucial role in the whole 'justiciability construct'. For example, there are various ways to achieve free vaccination for the new born if is not provided by the State such as (i) by way of approaching the lawyer who helps in drafting and putting the claims before the State, regarding the creation of the mechanism so as to provide free vaccination to the new born and (ii) if such a mechanism already exists, then by compelling the State to deliver the same. The present way of addressing the above issues through Law Clinics is, by applying 'lawyer-centric approach', which also means, looking the issues from a different perspective, as to how the legal system helps in providing access to free vaccination to the new born and not from the perspective of how the person who has no access to free vaccination, can get justice. Most of the

[14] Michele Leering, *Conceptualizing Reflective Practice for Legal Professionals*, 23 JOURNAL OF LAW AND SOCIAL POLICY (JLSP) 83 (2014).

[15] According to one school of thought, exposing law students in the initial years itself to the societal issues, can lead them to substance abuse or depression, which may eventually affect their competency as a Lawyer, over whom the society would depend later on, and according to the other, 'Access to Justice' clinic develops innovative skills amongst the law students, which help them in analysing and interpreting the statutes well.

times, we fail to differentiate between the concept of 'accessing justice'[16] and 'access to justice'[17], and, therefore, also fail in addressing the issues appropriately. 'Accessing Justice' is a daunting task, because of lack of enough number of lawyers in the State. Even in the effective presence of Legal Services Authorities (LSA), it is very difficult to address all the civil claims, because of various factors[18]. There are various perceived perceptions prevailing in the society regarding the civil justice issues, such as, many people think that (i) the problem is not that important and (ii) sometimes people don't act because they carry one or the other reason, for example, they think that (a) nothing can be done at that particular time and (b) sometimes they are not certain about their rights (c) further sometimes they don't know what to do in a particular scenario, (d) sometimes they also think that legal recourse will be time consuming and shall also be an expensive affair (e) it is also to be seen that people think that taking legal recourse in long run would spoil their relationships (f) People are also reluctant to take legal steps due to either threat or because of stress factors. It has also been observed that people opt for non-legal recourses also, such as, reaching to Unions, Friends, Relatives, Police, Support Groups, Internet, Libraries, Non-Government Organisation, etc. instead of taking the legal recourse due to either its non-effectivity or the time it takes to adjudicate the issue.[19]

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[16] 'Accessing Justice' approaches the issue from the perspective of a legal system, which also means, access to lawyer.

[17] 'Access to Justice' approaches the issue from the perspective of a person which means as to how to resolve the issues per se. Also read, Rebecca L. Sandefur, *Access to What?*, 148 (1) Daedalus, THE JOURNAL OF THE AMERICAN ACADEMY OF ARTS & SCIENCES (2019).

[18] There are various factors, because of which requirement of civil justice has not been addressed despite having full-fledged fleet of Legal Service Aid Lawyers, such as, lack of knowledge regarding rights per se, cultural inhibitions, God's will, etc.

[19] See A B Currie, *The Legal Problems of Everyday Life* in Rebecca L Sandefur (ed.), ACCESS TO JUSTICE, (JAI Press, Emerald Group Publishing Limited, United Kingdom, 2009) 1 – 42. (1st edn. 2009)

And, therefore, it is the Law Clinic only which is in a position to reflect on those issues, which reach to the lawyer's chamber and not which due to various factors, had not seen the light of the day. All the civil disputes, due to above factors, are not addressed at all. But then the moot question is as to what are we actually expecting from CLE programmes in the Law Schools? If the mandate of these CLE programmes is only to address those issues which just prevail at the surface but not which are beneath, then they are already fulfilling our expectations, by developing many more skill-oriented courses, such as, clinics, incentive-based programmes for the students, etc. But, if we are seriously concerned about the 'access to justice' issues or are keen to work for those persons who have either no access to justice or do not think their issues within the four walls of law, then it is a high time that we should start grooming the lawyers who are not only legally trained, but also trained to tackle the issues of those, who are not thinking their issues as legal or which need redressal. It is therefore, necessary to address such issues through, Law Clinics, who can work towards resolving disputes rather than merely assisting in addressing the lawyers.

## III. Clinical Courses and Access to Justice: The Journey till now

It is thus evident that the Clinical courses are assisting in achieving 'access to justice' by allowing them to be used as a place to have client interviewing, which allows the students to not only reflect on a potentially legal issues, by diagnosing the problem, but it also allows them to come up with tailor-made solutions. The Law Clinics thus, address the most pertinent issue of our times, 'accessing the justice' by the marginalised and most vulnerable communities of the society. They are also helpful in raising the

unpopular voices[20] before different forums, such as Supreme Court and the High Courts, by way of invoking their writ jurisdictions. They are the best in bridging the gap between the law and the society. CLE is also being termed as a 'Reflective Practice'[21] programme, as it allows to convert the total legal experience into the working education.[22] Though, reflective practice is not a new norm, as it is evident in various other professional fields such as Nursing and Social work. Since the reflection is grounded on one's experience, therefore, it allows the students to apply legal information which they are receiving during their academic pursuits, in reference to clients they interact with. At National Law University, Delhi in Clinic III (IXth Semester, Vth Year), the students have an option to join any of the six clinics, as per their preferences, (i) Health Rights (Human Rights) Clinic (ii) Family/ Personal Law Clinic (iii) Consumer Rights Clinic (iv) Criminal Law Clinic and (v) Mediation Clinic (vi) Women and Child Rights Clinic. There are certain other clinics, such as, Project 39A, which effectively work towards 'accessing justice' to the death penalty prisoners, along with other works. This Clinic helps the death row prisoners, by providing lawyers to represent them before the Supreme Court of India and other such forums which help them in commuting their death sentence.[23] These Clinics help the students in learning the actual application of law right from the beginning. It also helps the students in connecting with the Clients by setting the stage. In these Clinics,

[20] There are various unheard voices, belonging to the vulnerable sections of the society, which carry unpopular demands but need to be raised and heard. For example, raising voice for the issues pertaining to LGBTQ+.

[21] Chapter-7, *Reflective practice: The essence of clinical legal education*, in Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice, AUSTRALIAN CLINICAL LEGAL EDUCATION: DESIGNING AND OPERATING A BEST PRACTICE CLINICAL PROGRAM IN AN AUSTRALIAN LAW SCHOOL, (the Australian National University, Australia 153 – 178 (1st edn. 2017).

[22] Georgina Ledvinka, *Reflection and assessment in clinical legal education: Do you see what I see*, 9 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION 29, 29 – 30 (2006).

[23] See website of Project 39A for reference, https://www.project39a.com/.

large scale simulation exercises are done with the help of the practitioners of law, which develop the understanding of both, the substantive as well as procedural aspects of the law. The students are enriched with the court experiences, which provide insights of the law.

Thus, wherever necessary, coordination should be done amongst the students, the Clinic Coordinator and the NGOs and the Lawyers including from the Delhi Legal Services Authorities (DLSA) to pursue a particular clinic more effectively and therefore, the students are expected to make field visits and disseminate legal information, for which various options are given to them such as, publishing pamphlets and other research booklets, using social media, painting posters, etc. For example, one can see the same in the working of the Health Law Clinic.

**III.1 Health (Human Rights) Law Clinic**

Health Law Clinic at National Law University, Delhi works towards 'access to justice', as it primarily aims at accessing Health Rights for all. The objective of this Clinic is *firstly*, to teach the students as to how to bridge the gap between the law and the society either by conducting the 'legal aid camps' offline/ online or by providing 'legal aid services', for reaching the goal of both 'accessing justice' and 'access to justice'. *Secondly*, the purpose is also to inculcate a spirit of social involvement in the students to utilize the legal knowledge they have amassed through the years and the skills gained through various internships, in a socially relevant manner in the practical field situations. *Thirdly*, the objective is also to develop proactive role amongst the law students for doing legal empowerment by way of performing legal aid services in a more responsive manner to ensure that the needs of the poor, vulnerable and other marginalised communities, such as, Children, Women, Elderly People (Senior Citizens), etc. are fulfilled. This Clinic has been redesigned and customized while

keeping in mind, the prevailing pandemic situation. It goes without saying that other than various other issues which affect these vulnerable communities, in the present Covid times, it is the health which has been affected the most and has accordingly, become an area of concern.

The objective of this Clinic is also to apprise the students with the practical problems faced by the marginalised persons of society and as to how the pandemic has worsened the situation. The students, therefore, are required to empower the individuals by disseminating information to them. The students are expected to pick the sub-themes[24] to reach to the community through, offline/ online platforms, such as, Facebook, Websites and other Social Platforms and also use online tools such as Google Forms to conduct their research and help the community members in identifying various health issues and inform them as to how the government, through various health schemes, is providing different facilities to them. The Clinic's mandate is to progressively realize the health rights, by access to health care. The students through legal materials, such as instruction manuals, charts, drawings and also by personally addressing/interacting with the community members offline/ online, have to inform them about the various schemes and initiatives taken by the Government and other relevant information to be accessed by them in order to achieve justice. Different methods are used by Law Clinics, towards 'access to justice' such as (a) preparation of Legal Literacy Primers on selected themes which also include the designing of the posters and the pamphlets in both English and Hindi (b) socio-legal research on related laws, via Google Forms or other means

[24] Sub-themes are (i) Access to medicines (ii) Access to hospitals (iii) Active and Healthy aging: Assessing NPHE (The National Programme for the Healthcare of the Elderly) (iv) Breast Cancer (Women): Assessing Issues and their Addressal (v) Covid Bandhu Scheme in Delhi (vi) Mohalla Clinics: Essential Medicines and Essential Lab Tests: Dissemination of Information (vii) Access to healthcare facilities and medicines for the pregnant women/ antenatal care.

(c) spread legal literacy through legal awareness programmes both through offline and online media such as Facebook, YouTube, Zoom Platform, Google Meet Platform, Radio, Television and concerned modes and (d) online legal advocacy on behalf of people in need of legal intervention. Under, the 'access to justice' the students have worked in the following fields, (i) Rights of Persons with Disabilities (ii) Health Challenges Faced by Acid Attack Survivors (iii) Mental Health and Covid-19 (iv) Doctors' Rights and Obligations (v) Access to Health Insurance: Challenges and Opportunities (vi) Code Red: A campaign towards better menstrual health (vii) Health and Wellness of Senior Citizens (viii) Access to Medical Care during the Covid-19 Pandemic (viii) Access to Vaccine During Covid-19 (ix) Access to Sexual Education among students in India and (x) Awareness and Implementation of Rights under NALSA decision and Transgender Persons (Protection of Rights) Act, 2019 for betterment of mental health in educational institutions.

### III.2 Criminal Law Clinics

Criminal Law Clinics are primarily working for creating 'procedural rights awareness/ consciousness'. In this way, it also works towards access to justice, by looking into the effective implementation of various Supreme Court guidelines such as, examining the application of *Arnesh Kumar*'s[25] case in Delhi, especially in Dwarka district. The Clinic also examines the effective implementation of *Lalita Kumari's*[26] case, wherein the Supreme Court held that it is mandatory for a police officer to register First Information Report ('FIR') in the cases pertaining to a cognizable offence, subject to certain exceptions. Towards, this end, the Clinic examines the police and judicial records, to see the

[25] Arnesh Kumar v. State of Bihar & Another (2014) 8 SCC 273.

[26] Lalita Kumari vs. Government of Uttar Pradesh (2014) 2 SCC 1.

effective implementation of Supreme Court guidelines and works towards securing the liberty of the people.

Similarly, 'Family and Personal Law Clinic' encourages the law students to access the clients facing family law problems and simultaneously allows them to have access to family law courts. In this way, they are in better position to reflect on the personal or family law problems.

## IV. Conclusion

The curriculum of law schools, essentially teaches, how to think like a lawyer and not how to act like them. The students therefore need to be exposed to real time aspects of law along with the procedure followed in courts.[27] However, hitherto, all the law colleges have not included all the CLE programmes as a core subject. It has to be borne in mind that CLE also encourages the students to feel the issues prevailing in the society which require urgent attention. The present law students are trained enough to examine the law but alongwith that, they are also bold enough to take crucial steps in enforcing the law for the upliftment of the weaker and vulnerable sections of the society.

We are living in changing times and legal profession is also not untouched from those changes. The technological tools such as mobile apps, web-based apps etc. have made in-depth changes in the lives of the people. The pandemic has further increased this virtual dependency[28], because of which people are more

[27] There are many other ways which are used by the Law Schools for creating a real time environment by way of simulation exercises so that legal education can be coupled with the practical aspects. See CAROLINE STREVENS, RICHARD GRIMES AND EDWARD PHILLIPS, LEGAL EDUCATION: SIMULATION IN THEORY AND PRACTICE, Ashgate, London, UK, p. 19. (1st edn. 2014)

[28] People are using online services for their demands of goods and services, such as using tele-health.

accustomed to the use of online services. There are various online dispute resolution portals[29], which help in negotiating the disputes and in such a scenario, the moot question is about the role of the law students in access to justice through CLE. One cannot underestimate the role of the law students in the CLE programmes, both as a service provider and as a learner. They are still the best in interviewing clients and disseminating information to them by one-to-one interacting with them, which helps in understanding the legal profession's role in addressing justiciable problems.[30] Law Clinics are certainly better equipped in building understanding among the law students about, *firstly*, differentiating between the legal and non-legal issues and *secondly*, assisting them in diagnosing legal problems and developing appropriate strategies to check them.[31] It is thus evident that CLE forms an intrinsic part of legal education.[32] It basically emphasizes on the practical aspects of law and it thus acts as a connecting link between academics which are taught in a law class and law which is enforced in the courts. This subject received huge criticism in the beginning, however, gradually, the people all across the globe have realized the importance of this subject and now appreciate that in order to have an all-round knowledge of law, it is extremely crucial to know the practical

[29] Ministry of Personnel, Public Grievances & Pensions runs an online portal 'Centralized Public Grievance Redress and Monitoring System' (CPGRAMS). The web address of the same is, https://pgportal.gov.in/.

[30] Law schools teach practical legal skills such as drafting, pleading and interviewing in the CLE programmes alongwith the ethical values and professional ethics. See ROSS HYAMS SUSAN CAMPBELL, AND ADRIAN EVANS, PRACTICAL LEGAL SKILLS: DEVELOPING YOUR CLINICAL TECHNIQUE (Oxford University Press, Australia and New Zealand, 2014 p. 20, 85 4th edn. 2014).

[31] Rebecca Sandefur and Jeffrey Selbin, *The Clinic Effect,* 16 CLINICAL L. REVIEW 57 82 (2009).

[32] CLE has developed as one of the most important courses in the past three decades in Asia for providing justice to the underprivileged and marginalised classes in India. See SHUVRO PROSUN SARKER, CLINICAL LEGAL EDUCATION IN ASIA 177 (Palgrave Macmillan, India, 1st edn. 2014).

nuances of law. CLE inculcates skills such as communication, client counselling, research, drafting, negotiating, and task solving etc. which have to be necessarily imbibed by a law student to excel both in legal profession and in social justice lawyering. In the present times, much more is expected from the Law Clinics, such as, collaborating with the therapeutic professionals, especially while delivering access to justice to the most vulnerable, marginalised and underprivileged class, such as, women, children, persons with disabilities (PWDs), etc., and therefore, as a response, 'Therapeutic Jurisprudence' (TJ) is developing.[33]

[33] Roni Rothler, *Clinical Legal Education and Therapeutic Jurisprudence in the Disability Rights Clinic*, in OMAR MADHLOOM AND HUGH MCFAUL (ed.), THINKING ABOUT CLINICAL LEGAL EDUCATION, (Routledge, New York, USA, 1st edn. 2022) pp. 29 – 48. In Disability Rights Clinic (DRC) and also at Legal Aid Clinic (LAC), it is expected that the clients, would need counselling also.

## Chapter - 13

# PEDAGOGY OF COMMERCIAL LAW: IN CONTEXT OF THE LAW OF CONTRACT

*Subhoda Banerjee**
*Ajay Kumar***

## I. Introduction

Humans are considered to be the most intellectual species on this planet. Since time immemorial the power of creativity has certainly been a defining characteristic of human beings. We live in a world which is constantly reminded by Darwin's theory of 'Survival of the fittest'. In order to survive and thrive in this fast-changing ecosystem, the drive to create has become a necessity. The power to imagine and innovate has landed us in the age of Fourth Industrial Revolution (also known as Industry 4.O)[1] which is significantly transforming the way we live, work, exchange views and share information. Law is engrained in the heart and soul of various disciplines and it cannot be understood in isolation. As such, the amphitheater of legal education is interconnected with many subjects like Psychology, Political Science, Commerce, Management etc., as it justly acts as a pointer of social change.

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1 Adelaja Oluwaseun Adebayo, Mani Shanker Chaubey and Levis Petiho Numbu, *Industry 4.0: The Fourth Industrial Revolution and How It Relates To The Application Of Internet Of Things (IoT),* 5(2) JOURNAL OF MULTIDISCIPLINARY ENGINEERING SCIENCE STUDIES 2477-2482(2019) URL:https://www.researchgate.net/.profile/AdelajaOluwaseun/publication/331044858_INDUSTRY_40_THE_FOURTH_INDUSTRIAL_REVOLUTION_AND_HOW_IT_RELATES_TO_THE_APPLICATION_OF_INTERNET_OF_THINGS_IoT/links/5c77f1ef299bf1268d2c8183/INDUSTRY-40-THE-FOURTH-INDUSTRIAL-REVOLUTION-AND-HOW-IT-RELATES-TO-THE-APPLICATION-OF-INTERNET-OF-THINGS-IoT.pdf.

Law is a culmination of logic and language. Thus, it acts like a bed rock in building various skills and facilitating varied aspects of human life.

Sir Henry Giroux, an eminent personality has rightly pointed out that "Pedagogy is not about training, it is about critically educating people to be self-reflective, capable of critically address their relationship with others and with the larger world…."[2] The above quoted statement is found to be very apt in today's world and specifically in the context of imparting legal education since law by its nature is multi-faceted and dynamic. The well-established rule which states that 'Ignorance of the law is no excuse'[3] clearly indicates that the onus of knowing the fundamental laws lies not only on the people belonging to the legal fraternity but also on every citizen of the respective country. Legal education enhances the communication skills, negotiation skills, debating capability, logical thinking, interpreting skills, problem solving skills etc. Studying law helps in all round personality development of the students. The students who study law by choice genuinely have an inclination towards the subject. This is generally not the case for students who study law as incidental to their degree, since they often study the subject out of compulsion. It becomes imperative to understand Commercial Law for non-law student if they desire to run a thriving business. Also, it definitely gives an added edge to the students who simultaneously or later pursue professional courses like Chartered Accountancy, Company Secretary etc. As such, the teaching pedagogy for law and non-law students differs to a certain extent.

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[2] All Henry Giroux Quotes about "Pedagogy", URL: https://www.inspiringquotes.us/author/7572-henry-giroux/about-pedagogy.

[3] R.L. Narasimham and R.L. Narasimhan, *Ignorantia Juris Non Excusat: Ignorance of Law is No Excuse,* 13(1) JOURNAL OF THE INDIAN LAW INSTITUTE 70-78 (1971), URL: http://www.jstor.org/stable/43950106.

Law of Contract has become a part and parcel of our everyday life.[4] Knowingly or unknowingly, we enter into a contract almost every now and then, for e.g., when we buy fruits or vegetables from the market, buy an insurance policy, use an Automated Teller Machine (ATM) to withdraw cash, start a new job in an organization, buy products online, get ourselves checked by a doctor, take the service of a coolie in a railway platform, execute a mortgage-deed or a sale-deed etc. Therefore, Law of Contract forms an indispensable subject of learning since it acts as a bed-rock in creating the foundation for all the Commercial Law subjects.

## II. Methodology

The Methodology adopted is purely doctrinal in nature. To develop the study primary sources like Bare Act, Law commission reports, Case Laws etc. and secondary sources like textbooks, articles from journals of repute, online databases and websites have been refereed.

## III. Discussion

### A. Issues and Challenges

One of the primary challenges that non-law students face while studying a law subject is that they fail to understand the relevance of studying the law subject to meet their career aspiration. Also, the mindset creates a hindrance in inflicting logical and critical thinking on the subject. Automatically, this perception towards the subject makes it more complex to understand.

[4] Jan M. Smits, *The Law of Contract: An Introduction*; in Jaap Hage & Bram Akkermans (eds.), Heidelberg, INTRODUCTION TO LAW 51-70 (2014) URL: https://ssrn.com/abstract=1922134.

The objective of imparting legal knowledge to the non-law students is not to turn them into advocate but to familiarize them with certain fundamental legal concepts so that they can use them in their business hemisphere.[5] A greater onus automatically lies on the legal Educator to design the course curriculum objectively for the papers like Business Law, Company Law, Consumer Protection Law etc. which the non-law learner studies as a part of their degree course.

The ambit of Commercial Law is itself very wide as it includes subjects like The Companies Act, 2013, Indian Contract ACt,1872, Sale of Goods Act, 1930, Indian Partnership Act, 1932, Negotiable Instruments Act, 1881, Consumer Protection Act, 2019 etc. In an integrated five-year Law course or in a three-year Law course, the subjects are specifically dealt with separately. However, one major issue that often becomes a challenge to teach the students of non-law stream is that under the single umbrella of Business Law paper: Contract law, Sale of Goods Act, Partnership Act, Negotiable Instruments Act and Limited Liability Partnership are covered. It is only the fundamental aspects which are studied under the Business Law Paper. However, it definitely creates a problem to impart the understanding of the concepts to the non-law students since all the separate legislations together are clubbed under one single law paper.

Interpretation of the legal language creates a lot of complexities for non-law background students. The usage of words in the Bare Act like 'Notwithstanding', 'Provided that' etc. many a times generates a lot of problems for the non-law learners. Most of

[5] Farihana Abdul Razak, Afidah Osoman, Patel and Iza Faradiba Mohammed Patel, *Teaching Law to Non-Law Background Students: Challenges and Strategies*, 9(3) III INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE INVENTION 51-55 (2020), URL: https://www.researchgate.net/public cation/ 341261771_Teaching_Law_to_Non-aw_Background_Students_Challenges_and_Strategies.

the students never feel comfortable to read the Bare Acts, instead they tend to read articles or materials which are very easily written. This automatically makes the subject boring for many.

At a macroscopic level, a non-law student many a times feels that there is no applicability of the law paper as a part of their course. It cannot be denied that such thoughts occur due to the perception that non-law students have towards the law paper that it will not help him/her in their business transactions, as every information is anyway very easily accessible. A non-law student may feel that there is no requirement to know 'what the law is' since he can anytime get the sample drafts readily available over internet and by plain reading can sign and execute them. However, at a microscopic level, the above perception does not hold true. Since a non-law student when he/she enters the practical world, elementary legal knowledge helps them to understand the applicability of product, services or transactions. For instance, apparently under Contract Law if the word 'offer' is to be interpreted by a non-law student, the student will have a plain understanding that it is an 'offer' that is being mentioned. Suppose there is a scenario where the shop Spencer gives an offer that there will be 50 percent discount if a purchase of Rs 5000/- is made. Further, Spencer makes another offer to a particular customer say Mr. X, that since he was the first person to enter the premises of Spencer shop on that very day, therefore, only he will be eligible to get 50 percent discount on whatever he purchases on that very day. Now without knowing contract law, a non-law student will never be in a position to differentiate between General offer and Specific offer. The first instance substantiates General offer and the second instance is about Specific offer. This is where the legal knowledge becomes a must.

There is no denial of the fact that the issues and challenges faced by a non-law student while studying law paper is much more when compared to a law student. However, it is also a matter of fact

that the journey of a law student is not at all a bed of roses. Often, the law students also fail to comprehend the words provided in the Bare Acts. As such, the legal Educator should be extra cautious while dealing with the law stream students. The Educator must be capable enough to systematically (i) introduce the objective and purpose of the Act followed by its applicability, (ii) point out the implication of each and every definition, (iii) break the sentences into parts with special reference to the punctuation marks, (iv) give due attention to specific terms like 'may', 'shall', 'and', 'or' etc., (v) point out the interconnection between section, subsections, clauses and sub clauses (vi) refer to other books and commentaries for better explanation.[6] Further, making the students apply the various statutory rules of interpretation would definitely help them to understand the Bare Act in the light of the above stated aspects.

**B. Strategies to meet the challenges faced by legal Educator**

**(i) Provision and Research based teaching with an Interdisciplinary approach**

The nature of law is itself interdisciplinary, hence while imparting legal education the legal system needs to be studied in light of various disciplines like History, Science, Economics, Commerce, Management etc.[7]

Below given is a scenario which has been expounded on the basis of intersection of Mahabharata and Law of Contract. The legal Educator is required to focus majorly on four important aspects while enriching the law students about the Law of Contract. They

[6] Srijayashree G. and Saleem Ahmed MR, *A Study on the rules of statutory interpretation*, 6(9) INTERNATIONAL JOURNAL OF CURRENT ADVANCED RESEARCH 6032-6035 (2017), URL: https://journalijcar. org/sites/default/files/issue-files/2971-A-2017.pdf.

[7] Alan M. Dershowitz, *The Interdisciplinary Study of Law: A Dedicatory Note on the Founding of the NILR*, 1 NORTHWESTERN INTERDISCIPLINARY LAW REVIEW 3 (2008), URL: https://heinonline.org/HOL/LandingPage?handle=hein. journals/nwilr1&div=5&id=&page=.

are: 'Rights', 'Privileges', 'Obligation' and 'Prohibition'. The words 'agreement' and 'contract' has been in existence in some form since the advent of civilization. However, it has remarkably gained its momentum in India when the Indian Contract Act of 1872 was enforced. Under the Indian Contract Act, 1872, the word 'Contract' is defined as an 'agreement enforceable by law'.[8] Also an Agreement is defined as "Every promise and every set of promises, forming the consideration for each other".[9]

Significance of the words like 'offer', 'acceptance', 'promise', 'verbal agreement' etc., are deeply rooted across the chapters in the greatest epic of all times i.e., Mahabharata. One part of the epic Mahabharata, revolves around abilities of the parties (Kauravas and Pandavas) being ascertained not based on the battle but on the basis of the game of dice. Definitely, a strong implication of an offer and acceptance is seen happening here, when 'Duryodhana' offered to play the game of dice and 'Yudhishthira' gave his acceptance to the same.[10] This offer and acceptance gave birth to an 'Agreement'. So, a verbal agreement was entered between the parties that whoever will win gets the right and privilege to acquire wealth, kingdom etc., of the other party. Also, it will be the obligation of the other party to abide by the instructions of the winning party. This episode stresses upon the words 'rights', 'privileges and 'obligation'. As such, when 'Yudhishthira' lost the formal game of dice to execute his promise, he had to set out on his period of exile along with his brothers and wife 'Draupadi'.

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8 The Indian Contract Act,1872, s. 2(h)

9 The Indian Contract Act,1872, s. 2(e)

10 Christopher T. Fleming, *Gambling with Justice: A Juridical Approach to the Game of Dice in the Dyutaparvan of the Mahabharata*, THE JOURNAL OF HINDU STUDIES 1-25 (2020), URL: https://www.academia.edu/ 44864578/ Gambling_with_Justice_ A_Juridical_Approach_to_the_Game_of_Dice_in_the_Dy%C5%ABtaparvan_of_the_Mah%C4 %81bh%C4%81rata. *Also see*, Sadhguru, *Mahabharat Episode 31: The Game of Dice*, https://isha. sadhguru.org /in/en/wisdom/article/mahabharat-dice-game.

An agreement can be either in verbal or written form. The significance of the verbal agreements can be deduced from the above scene of Mahabharata. Even though verbal agreement is not prohibited yet absence of any supporting document poses serious challenge to prove such agreements in the eye of law. 'Yudhishthira', at any point of time could break his promise and abstain from going for an exile by denying the existence of the verbal agreement. But his character never allowed him to compromise with his conscience and therefore, he did not adopt the path of adharma.

In light of the above instance from Mahabharata, it can be inferred that an integration of an interdisciplinary approach of teaching and learning would definitely inflict reflective thinking among the law students. This approach not often, but sometimes may work for well for students from other streams as well for those who are interested to understand law from a wider dimension.

**(ii) Change in the pedagogy of teaching**

Non-law students require more attention while they are made to study Law paper. Unlike Law students, students from other streams should never be compelled to do a dissection of the Bare Act (like reading line by line the sections, subsections, clause, sub clause) and get exposed to the intricacies of law argument. Rather, innovative way of teaching law to the non-law students will enlighten them about the practical implication of law in the universe of business. Obviously, when there is a change in the pedagogy of teaching law to non-law students, the learning outcomes will also vary.

Use of flowcharts, videos, PowerPoint slides can give both a law and non-law student, a pragmatic understanding of complex legal concepts. This also helps them to breakdown the legal concepts and understand them in a step-by-step basis.

**(iii) Frequent usage of examples and integration of cenario-based questions**

A major issue that may be faced by non-law student is that even though they understand the logic behind a particular concept they may not well understand the practical application part. Therefore, rapid usage of examples and scenario-based questions can help to imbibe reasonable understanding of the application of the laws to the factual scenarios. This approach would also help the law students to answer a particular issue which may vary based on facts and circumstances of the case.

**(iv) Innovative method of teaching**

This becomes an even more integral part of delivering quality legal education to the non-law students. Often, there is lack of interest in the student's mind. There is a reluctancy of definite willingness to understand the law papers. Therefore, innovative methods of teaching techniques may be used like group assignments, visually engaging through usage of smart boards, flipping classrooms, cloud classrooms etc.[11] This helps in alleviating activity-based learning and keeps the students engaged, generating an interest in the respective law subject. Automatically, this improves better management of the classes.

When it comes to the law students specifically, imparting clinical exercises is one of the most popular methods of imparting effective teaching. It enhances interviewing skills, negotiation skills, problem-solving skills, client counselling skills etc. Group discussions, Role Play, Debates, Field visits etc. would help in creating new generation of Lawyers popularly known as Gen Z

[11] Alison Owens and Irene Wex, *What are the Challenges involved and the Strategies Employed in Teaching Australian Law to Non-Law Students from Non-English-Speaking Backgrounds and Cultures?,* JOURNAL OF AUSTRALIAN LAW TEACHERS ASSOCIATION 89-98 (2010).

Lawyers.[12] Moot Court or Mock Trial model may also be devised by the legal Educator so that students become practically equipped with the application of the case laws. Besides, continuous internal assessment through assignment writing, project submission, class test etc. can also contribute in uplifting the student's performance.

**(v) Usage of Frequent Case Study**

Subjects like Law, Management, Commerce, etc. are very versatile in nature and requires continuous development of practical skills. Therefore, case study approach becomes a very significant method of teaching the subject. For instance, let us say that Mr. Mohan promised to pay Mr. Soham, his son, a sum of Rs. 2 lakhs if he successfully qualifies the Common Admission Test (CAT) in the first attempt. Mr. Soham qualified the entrance examination in the first attempt. However, Mr. Mohan did not pay the amount as promised. Mr. Soham instituted a suit in the court of law for recovery of Rs 2 lakhs. Will Mr. Soham succeed in recovering the amount under the Indian Contract Act of 1872?

The above case study is based on section 10 of the Indian Contract Act, 1872. The provision expresses that generally, whenever the parties intend to create legal relationship, their agreement gives birth to a contract. The general presumption is that Agreements of a social or domestic nature do create legal relationship. As such, they do not become a contract as there is no enforceability by law. The leading case on this point is Balfour vs. Balfour[13] wherein an agreement was entered between a

[12] S. Jayaselvi and K. Latha, *Innovative Pedagogy of Law Teaching: An Emerging Need*, 5(1) INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 2176-2191 (2022), URL: https://www.ijlmh.com/ paper/innovative-pedagogy-of-law-teaching-an-emerging-need/.

[13] Safeea Sabeer, Balfour Vs. Balfour- Case Analysis [1919] *2KB 571*, URL: https://www.legalserviceindia.com/ legal/article-4531-balfour-vs-balfour-case-anal ysis-1919-2kb-571.html.

husband and a wife. The husband failed to keep his promise of paying a monthly pocket allowance to his wife. Hence, the wife sued the husband in the court of law to recover the money. The court held that the husband was not liable because there was formation of a domestic agreement only, without any intention to create any legal relationship. Thus, by applying the above provisions in the instant case it can be deduced that the Mr. Soham cannot recover the amount of Rs. 2 lakhs from Mr. Mohan, his father, because of the reason explained above. This kind of case study not only helps the students to analyze and solve practical based questions but also benefits them by making them think critically.

### (vi) Adoption of Issue, Law, Application, Conclusion (ILAC) method[14]

ILAC stands for Issue, Law, Application, Conclusion. This method helps in understanding the case laws easily. It also helps the students to apply effectively legal principles to facts of a problem questions. Further, it also helps in writing answers in a very objective manner[15]. The first step in ILAC methods is to identify the legal issue involved in the problem. The second step is about setting out and explaining the legal principles, legislations and case laws. In case of the law students the principles need to be mapped with the specific provisions as per Indian Contract Act,1872. The third step is Application: applying those laws to the facts of the problem so as to answer the question raised in the issue. In case of law students, they additionally decipher the *Obiter Dicta* and *Ratio Decidendi* of the judgment. The fourth and final step is Conclusion. This requires the student to

[14] Edward, *What is ILAC Method?* (July 2021), URL: https://www.sampleassignment.com/blog/what-is-ilac-method.

[15] Janet Yennusick, *How to Use the ILAC Method in Problem Questions*, Yennusick Legal Corner, URL: https://yennusicklegalcorner.ie/how-to-use-the-ilac-method-in-problem-questions/.

answer the issue and state which party they think has the stronger argument and what remedy they will obtain from the courts.

Though there is no one size fit all solution. However, the below mentioned scenario can act as a guiding step for not only the law students but also for the non-law students to analyse a problem-based scenario using ILAC method.

XYZ Ltd. named company announced through advertisement to the society at large that they have manufactured a medicine called 'Red capsule' which will act as a preventive medication for cough and cold. However, they also announced that if anyone after consumption of the medicine as per their detailed set of guidelines, contracts cough and cold, will be rewarded with an amount of Rs 50,000/-. Mr. A followed all the guidelines and consumed the medicine. Unfortunately, Mr. A contracted cold and cough very severely. Therefore, Mr. A demanded the reward of Rs 50,000/- from XYZ Ltd. XYZ Ltd. refused to pay the money. As a result, Mr. A instituted a legal suit against XYZ Ltd. in the court. Will the court decide the case in favour of Mr. A?

The material facts that are required to be considered in the above situation are as follow:

1. There are two parties: The company XYZ Ltd. and Mr. A.
2. XYZ Ltd. has made an offer by making an announcement to the entire world.
3. There is an acceptance of the offer by Mr A.

The relevant Issues that emerge from the material facts are:

1. Whether a valid offer has been made by XYZ Ltd. company?

2. Whether there is an acceptance of the offer on the part of Mr. A?
3. Will there be a binding contract between XYZ Ltd. and Mr. A?
4. Whether Mr. A will be entitled to get the reward?

**(vii) Principle of Law relevant to the question**

The landmark case of Carlill v. Carbolic Smoke Ball Co.[16] where an offer is made to the whole world and acceptance comes from particular people upon fulfilment of the contractual terms, serves as a relevant precedent for the above illustration.

The announcement made by XYZ Ltd. to the public at large is general offer made to the entire world. It is also unilateral in nature. The fact that Mr. A consumed the Red Capsule as per the issued guidelines constituted an acceptance of the offer. The purchase of the Red Capsule also formed a good consideration.

**(viii) Application of the law to the issue**

Using the famous judgement of Carbolic Smoke Ball Co.,[17] the public announcement constituted a valid unilateral and general offer. The said conditions were fulfilled by Mr. A. Therefore, he was entitled to receive the reward.

**(ix) Conclusion**

The contract between XYZ Ltd. and Mr. A is valid as Mr. A fulfilled the terms and condition of the offer and thereby accepted the offer. As a result, became eligible for the reward of the offer.

[16] Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 Court of Appeal.
[17] *Ibid.*

## IV. Concluding Remarks

Law of Contract is deeply rooted to our everyday lives. Starting from the 'Satya yuga' to 'Kali Yuga', words like 'offer', 'acceptance' 'promise', 'breach of promise', 'agreement', 'contract' etc., existed in some form or the other. Law in action creates better impact on the minds of the students. Hence, there is an urgent need to shift from the traditional method of teaching to innovative methods of teaching. Legal Educators need to organise workshops, seminars, various competitions etc. so that students' participation increases and they transform to more innovative learners. The wings of the various branches of law have broadened over a period of time making it an imperative element of learning for not only students of law stream but also for other disciplines like commerce, engineering, medicine etc. The irony is at times, students of non-law stream are generally not interested to study law papers since they perceive it to being difficult and complex. Therefore, a constructive and effective teaching pedagogy is required to teach law papers not only to the law students but also to the non-law students. It is the duty of a legal Educator to introduce the elementary legal principles in a very simple and meaningful manner for any type of students. Further, continuous usages of examples, class discussions, group study, role play etc. would definitely help in improving the teaching and learning process.

## Chapter - 14

# ROLE OF CLIENT COUNSELING IN PROFESSIONAL LEGAL EDUCATION

*Vishal Guleria**

## I. Introduction

In the twenty-first century, legal education is experiencing a paradigm shift. Education in India is robust in its principles and has the capacity to guide its future if it can deal with the present problems of technology, globalisation, and value degradation. Only by preparing our highly gifted young with knowledge and talents to sustain the demands of all-round development will India be able to assume its due position in the knowledge society of tomorrow. It is a monumental effort in which civic society and the corporate sector should collaborate with the government to expand educational infrastructure in order to give access to all qualified citizens at varying levels of educational attainment. Simultaneously, the academic community should work to improve quality of education at all levels in order to meet global standards, without which education would lose its competitive advantage in the labour market and in the fight for progress.[1] Traditional legal education devotes a significant amount of time to familiarising aspiring attorneys with the law as it appears in legislation, law reports, and textbooks, but very little time is devoted to the lawyer-client relationship. If the management of a case is dependent on information received from the client and the client's

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1 N.R. MADHAV MENON, REFLECTIONS ON LEGAL AND JUDICIAL EDUCATION 80 (2009).

acquiescence to a course of action, the effectiveness of attorneys' interviewing skills is an important topic to investigate.

In the twenty-first century, legal knowledge-providing institutions are going to great length to instil clinical or practical skills in their pupils. Clinical education provides students with unique chance for professional and intellectual growth. Clinical programmes can be conceived of in far broader and more inventive ways than traditional models of legal education. Clinical work presents the perceptional, instrumental, and operational components of the legal process and legal system. Furthermore, the interrelationships between these factors, as well as the necessity to consider them in the context of the role and purpose of law and the legal profession in society, may be comprehended.[2] Client Counselling is one such technique of clinical legal education in which the appropriate legal abilities required on the part of an attorney in the context of his client are attempted to be instilled in law students through different ways, one of which is exposing them to Client Counselling contests. Client Counselling is the most essential predictor of how a prospective client's legal journey will continue and what goals it seeks to attain. It is the first and most important step of advocacy, following the preliminary interview stage with a prospective client. As a result, it is also the process of converting a prospective/potential client into an actual one. Needless to say, in order to thrive in his profession, build a reputation for himself, and provide outcomes that not only meet but surpass his clients' expectations, every lawyer must be skilled at this procedure. This paper investigates the necessity for and value of Client Counselling in the present legal education system, as well as the numerous dimensions associated with Client Counselling.

[2] *Id.,* at 135

## II. Understanding Client Counselling

Counselling is all about presenting your client with all of the information he or she needs to make an informed decision about their condition or problem, and as such, it is one of a lawyer's major obligations. If a person believes that Client Counselling is a minor element of a lawyer's profession, that person is entirely erroneous. Client Counselling is the art and science of interacting with, understanding, observing, and getting the truth from a potential client. During the counselling process, attorneys generally wield enormous power in influencing the outcome of the counselling, steering their clients through the decisions, and making the clients passive observers. Finally, the counsellor takes decisions on behalf of his or her clients. The legal profession developed through time, and the notion of client-centred counselling became commonplace. Client Counselling, also known as client-centred counselling, is the lawyer assisting his client in making decisions rather than making decisions on their behalf.[3]

Developing life-long abilities in law students is an objective shared by all legal schools. Counselling with clients is a start in the right direction. What distinguishes a great lawyer from a good one is their ability to elicit the necessary information from the client and present their thoughts succinctly and confidently. Developing a solid attorney-client rapport is a process that requires years of practise. There may be numerous problems while working with a client such as trouble developing trust, not asking the correct questions to gather the important information the client is keeping, and so on.

[3] *Engage effective client counselling*, IPLEADERS, URL: https://blog.ipleaders.in/engage-effective-client-counseling/, (Last Visited on 3 January 2022).

The client must be willing to aid in a counselling relationship, and the lawyer must protect his client's best interests. Lawyers perform legal interviews and counselling in an office setting, where they see clients one or two at a time, with the door closed. Lawyers gather information from their clients to serve as the foundation for their advice. Legal counsel can be provided for both litigation and planning objectives. Clients may seek guidance on the right legal course of action to take before the courts.[4]

A professional client counsellor may create a therapeutic environment, instil optimism, quickly focus on realistic objectives, and intelligently pick evidence-based treatments. The therapist should work on establishing an environment in which the client feels comfortable enough to provide all important data and his side of the storey regarding the problem when counselling the client. Unlike other forms of counselling, the client in legal counselling may seek multiple answers from the lawyer. As a result, the lawyer must understand what the client wants. The lawyer must assess the client's objectives, expectations, and needs. While doing so, the lawyer should keep the client's expectations in mind.

## III. Intricacies Involved in Client Counselling

As stated above, the students of legal institutions need to imbibe the skills associated with the process of Client Counselling. The following steps need to be taken care of while imparting training to law students on the intricacies of Client Counselling:

[4] Srividya Jaykumar, *Client counselling for Tomorrow's Lawyers*, ALL INDIA HIGH COURT CASES, JOURNAL SECTION 13 (2007).

**a) Client Interviewing:** The client opens up and expresses his problem, concerns, and expectations during a Lawyer-Client session. To acquire the necessary facts, the lawyer listens, makes notes, and questions the client. Through verbal communication, information, points of view, and requirements are exchanged. This conversation, which is essential for good therapy, is known as 'interviewing.' Client interviews are an important aspect of the legal profession. Giving options, offering alternatives, effective client representation, document writing, pre-trial preparations, and so on all rely on client interviews. Lawyers must be aware of the facts surrounding their client's condition. Factual matrices are the conditions in which laws work. "Neat bundles of facts serve as a foundation for professional conduct by attorneys." One of the primary goals of interviewing is to learn the facts of the tale. It is the lawyer's obligation to gather the facts. The fact that the client has contacted a lawyer suggests that he or she has discovered some legal issues. However, the client may be unaware of which things, facts, instances, and documents are crucial and pertinent. The lawyer must gather the essential information and determine the legally sensitive facts. Expressions of emotions such as disillusionment, pain, and so on can also be essential facts. Interviewing is often used to identify witnesses, records, and other items.[5]

The first significant phase is aiding and allowing the client to recount the storey naturally, only with support from the lawyer. The lawyer begins to take a more visible active role in the middle of the interview, confronting the client about ambiguities or gaps in the facts, or seeking more information on certain themes. The lawyer then summarises the relevant facts and the client's wishes to verify that they have been appropriately understood by the client. At this phase, the lawyer and the client frequently play equal roles. Finally, the lawyer advises the client or outlines a

[5] See *Supra* note 4

course of action by "counselling" all potential possibilities. The lawyer then confirms that the client has agreed to the plan of action and begins carrying it out, creating the next contact before finishing the session. In this scenario, the lawyer is the primary source of action.[6]

**b) Assessing Client Goals, Expectations and Needs:** Unlike other types of Counselling, the client in legal counselling may be seeking multiple solutions from the lawyer. As a result, the lawyer must grasp what the client desires. The lawyer must examine the client's goals, expectations, and needs. While assessing this, the lawyer should consider the client's expectations. Lawyers should consider whether these expectations are realistic and lawful. If they are unlawful or unrealistic, the lawyer should warn the client not just that they are unrealistic but also about the implications of pursuing illegal remedies. A lawyer's professional role also includes alerting the client not to use unlawful tactics to meet the client's expectations. [7] The lawyer should employ the most "open" type of starting inquiry or let the client's storey emerge organically, in a way that is more likely to be reflective of the client's "genuine requirements," as well as the factual facts.

**c) Obtaining Information:** Law school teaches students to "think like a lawyer," but not how to act like one. Education in the legal arena focuses on organising and presenting legal arguments and outcomes in relation to a specific and limited set of facts. Young attorneys who have spent three or five years being taught only to answer exam questions with neatly laid out facts are likely to be dissatisfied when faced with the unpredictability and complexity of real-life events whose facts have not been verified for legal

[6] Avrom Sherr, *Lawyers and Clients: Their First Meeting*, URL: https://onlinelibrary.wiley.com/ (Last Visited on 25 January 2022).

[7] Available at https://egyankosh.ac.in/bitstream/123456789/39106/3/Unit-2.pdf, (Last Visited on 28 January, 2022).

relevance. Because practitioners of law frequently spend far more time seeking facts than conducting legal research, the ability to collect information with precision is a vital skill in the practise of law. As a result, questioning must occur, but in a kind and understanding manner. Repeating again and again the same set of questions is also something that inexperienced interviewers have to overcome. It is a waste of time and may suggest a lack of a cohesive strategy. It also signals to the client the lawyer's lack of understanding of the topic, which may ultimately result in client irritation as well as a loss of trust in the lawyer's ability.

**d) Explaining Alternative Solutions:** Once you've identified your client's goals and expectations, you must enable him or her to make a decision on the course of action he or she wishes to take to solve his or her problem. Making the client pick his or her own course of action necessitates a concerted effort on the part of the lawyer. Simply discussing different ways would not enough. You must describe the implications of each alternate strategy. In other words, you must discuss the benefits and drawbacks of each strategy. This obviously allows the client to pick the course of action he or she want to follow. The goal of providing the choices is to empower the client to make future decisions. It increases the client's autonomy and self-determination.[8]

**e) Observing Gaps and Inconsistencies:** When you notice missing pieces and inexplicable discrepancies in your clients' stories, it might indicate that the client is afraid of being overtly or silently chastised by the interviewer. A dread of disclosing information to others, or the notion that the lawyer will only perform properly for guiltless/innocent clients may be his thinking. On the other hand, if you detect exact consistency with no gaps or variances as the client attempts to recall and express, there is a probability that the tale is distorted or rehearsed rather

[8] *Ibid.*

than genuine attempt to communicate. For a complicated situation, some gaps and inconsistencies are inevitable and unavoidable.[9]

**f) Body Language:** Body language is a kind of non-verbal communication, and attorneys are frequently reliant on words alone. Non-verbal communication is used by both clients and attorneys. It is critical to notice what body language is typical for the client as well as notable bodily alterations in order to appropriately analyse non-verbal cues. Visually observed body language includes emotion, gesture, posture, movement, eye contact, and distance or closeness. Pace, pitch, intensity, loudness, and speech faults are examples of auditory body language. Body language conveys liking/disliking, relaxation/anxiety, and dominance/submissiveness. It is worth noting that body language is frequently influenced by two factors: first, personality, for example, a shy person may be unable to look straight into the eyes while speaking, but this does not imply that they are lying; and second, physical difficulties, for example, frequent blinking of the eyes may be due to new contact lenses rather than anxiety.[10]As such, body language gives non-verbal cues to the Lawyer and he needs to be sharp enough to pick up these cues.

**g) Being a Good Listener:** Being a good orator is only one aspect of reaching excellence in advocacy. A prospective law student must also be an excellent listener. Clients like it when we actively listen to and engage in their interviews. Active listening requires determining the "who?", "what?", "when?", and "where" of our clients' problems. Keep track of the clients' goals, values, and expectations as well. Finally, we look for emotional context in the client's storey. As a result, an efficient Client Counselling session

[9] See *Supra* note 4

[10] *Ibid.*

necessitates the lawyer patiently listening to his client's remarks and then attempting to grasp the matter at hand.

**h) Mutual Respect:** While counselling, you must respect the client as much as the client respects you. Because of mutual regard, the client is able to communicate freely. Even if you disagree with the client's choice, you must respect it. Your only responsibility is to help your client make an educated decision. In general, the client's values and your values are frequently at odds. For example, in the situation of domestic abuse against a wife, the wife's worries differ from yours. You may believe she should make a report and have the spouse arrested. However, she may be hesitant to do so since doing so would mean entirely breaking her relationship with her spouse, which she believes would have significant socioeconomic ramifications. Even though you are a legal expert, the client has first-hand knowledge of the situation, and it is the client who will bear the repercussions. As a result, as a professional, it is your responsibility to respect not just the client but also his or her choice. That doesn't imply you have to accept the client's choice without question. If the client's option is not lawful, you must assist him by explaining the legal ramifications of such a course of action.[11]

**i) Language:** It goes without saying that the language you are using needs to be easily comprehensible and understandable to the client. The law student who is the budding 'would be lawyer' needs to clearly ask as to which is the language that his client is comfortable in. He then needs to communicate in the language of the client only and not in the language in which he himself is comfortable. Furthermore, when counselling the client, the lawyer must utilise basic and straightforward language. He must be careful not to use legal jargons, especially while describing the legal situation. When the Lawyer use legal language, the client

[11] See *Supra* note 4

may become absolutely befuddled. It is your responsibility as a professional to make complicated things simple and easy to understand, not the other way around.[12]

**j) Not Giving Guarantees of Effectiveness of a Suggested Solution:** As a student counsellor who is patiently listening, observing and then giving advice to his client, the one thing that needs to be taken care of is that you need to suggest all the available alternatives to the[13]client and then enable him to choose the course of action that he deems fit from the alternatives that have been laid out before him. What needs to be taken note is that you must not guarantee the assured positive result of a selected outcome and you should avoid making any false promises to the client which may raise his expectations regarding the probable outcome of his case. All you need to assure your client is that you would give your best in the case and there would be no dearth of commitment and efforts from your side in pursuing the case with diligence and sincerity.

**k) Being Ethically Upright:** A Client Counselling competition in which a law student is participating should be seen as a reflection of what that student would become when he attains his degree and starts practising. As such, ethics also play a big role in these competitions, in the same way as they would play in the actual life of a lawyer. So, one needs to be ethically upright throughout his dealings with his client in this competition. For example, if it is a Motor Accident Claims Tribunal matter which the client is involved in, then you should not ask for a contingent fee, dependent upon the outcome of the case. Not only would it be ethically incorrect, it would not go down well with the Judges as well.

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[12] *Ibid.*

[13] *Id.,* discussed in point c.

## IV. Criterion for Judging

The Judges of a Client Counselling competition are experienced Men, who would be looking into various factors while evaluating the participants of the competition. But the primary factors which the Judges look into are the following:

**a) Ability to listen and then explain the Law in the Simplest of Language:** The Judges in a Client Counselling competition are observing you minutely. At the outset they would be observing your patience and demeanour in listening to your client. As such, you need to be very patient in hearing your client out. Interruptions on your part when he is speaking, would go against you. Similarly, when it is your turn to speak, they would be observing your ability to explain all the possible alternatives to your client in the simplest of language but in an effective way.

**b) Observing the Bonding or the Comfort Level between You and Your Client:** Again, this is an important criterion for Judges to evaluate the participants. The Judges have to be convinced that there is a certain level of comfort level between you and your client. If you are irritated, or if your client is dissatisfied with your legal solutions, then it doesn't go well with the Judges. On the other hand, if there is visible bonhomie between the client and the counsel, it surely reflects on the fact that the Counsel has been able to establish a rapport with his client, and the client trusts him.

**c) Relative Satisfaction of the Client:** The clients also play a very important role in a Client Counselling competition. The Counsel has to direct his energies and efforts in giving reasonable legal alternatives to his client. He has to ensure, with his conduct, with his patience, with his legal acumen that he is able to satisfy his client and that no doubts remain in the mind of the client. This, if done, would go down favourably with the Judges.

## V. Need for Introducing Client Counselling as a part of Under Graduate Curriculum

Client Lawyer interaction is an area which is generally neglected when it comes to equipping the law students with the requisite skills required in this area. Client Counselling course, if offered as a part of the under graduate law curriculum, would surely serve the purpose of giving the requisite skills to our students in this important area. The students intending to opt for litigation after attaining their law degrees must be provided the requisite skills which are required of a Lawyer to not only effectively counsel his client but also to ensure that this first meeting between him and his client becomes a life-long enterprise. As is rightly said, 'first impression is the last impression', so the lawyers of the future need to be trained on how to create this 'lasting first impression.' For achieving this, it is recommended that Client Counselling be introduced as a practical paper in the under graduate curriculum, so that the budding lawyers who are being nurtured in the legal institutions are given thorough training in this very important area. Practising lawyers of a considerable experience could be roped in by the Institutions to conduct mock Client Counselling competitions. This would go a long way toward training students to overcome these obstacles and establish themselves as legal experts.

## VII. Concluding Observations

The foregoing discussion makes it amply clear that providing clinical legal skills to our students is the need of the hour. Just like the medical profession, where the emphasis is high on the medicine students to keep performing practical procedures on the human body and thereby keep honing their skills, similarly, in the Legal education scenario as well, we need to clearly understand that law students cannot be bereft of important practical skills when they pass out. Client Counselling is a small step in this direction. This is a skill that every law student must possess when he passes out from

the Institution and joins litigation. As stated earlier, the first impression that a client has of his Lawyer, sometimes, becomes the lasting and permanent impression. Resultantly, every future Lawyer must know how to interact with his client in the first meeting (and subsequent as well), how to build confidence in his client to disclose all facts of his case, how to provide the best legal advice and alternatives to his client and finally how to ensure that his client goes back home thinking that he has made the right decision by hiring 'Him' as his Lawyer. Efforts need to be made by Legal Educational Institutions to hold in house Client Counselling competitions on a regular basis, practising lawyers need to be roped in to effectively address the issues concerning the intricacies of 'Client Counselling'. Generally, this is a neglected area when it comes to the Law Institutions. The trend has not yet caught up in the traditional Universities though it has become a regular feature in the National Law Universities. Such competitions should be held regularly in all Institutions. There are several Legal Institutions which presently host Client Counselling competitions. The students should be trained and encouraged to participate in Client Counselling competitions. If efforts are earnestly made in this direction, the day is not far when law students would leave the educational institutions fully equipped with the requisite legal skills necessary to empower them in their professional lives.

## Chapter - 15

# PEDAGOGY OF PROFESSIONAL LEGAL EDUCATION

*Ms. Nanda Pardhey**

*"The best teachers are those who show you where to look but don't tell you what to see". –Alexandra K. Trenfor*

## I. Introduction

Today we leave in information technological world of virtual jurisdiction, where we live in World Wide Web. Educational institutions have adapted to paradigm shifts in teaching and learning pedagogies over many centuries[1]. There has been an increase in demand for legal education[2]. One of the more significant institutional changes across universities in the late 20th and early 21st centuries has been the emergence of e-learning, partly to maintain viability and partly to recognize cultural and societal changes over time[3]. The Bar Council of India has in this regard framed Rules of Legal Education, 2008 and Chapter II thereof deals with the Standards of Professional Legal Education[4]. Under the Advocates Act, section 7(h) ordains as one

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1 Tasha Maddison Maha Kumaran, *Distributed Learning Pedagogy and Technology in Online Information Literacy Instruction*, ISBN: 978-0-08-100609-2, CHANDOS PUBLISHING 239 (2017).

2 State of Maharashtra vs Manubhai Pragaji Vashi & Ors. 1996 AIR, 1 1995 SCC (5) 730

3 *Supra note* 1

4 Satheesh Kumar. N. vs Mahatma Gandhi University on 23 September (2015), URL: https://indiankanoon.org/doc/92609800/

of the functions of Bar Council of India to promote legal education, to lay down standards of such education in consultation with the universities of India imparting such education and the State Bar Councils[5]. The use of, and thinking around, a teaching pattern to represent and subsequently track the refinement of pedagogy, over an extended period of time, was employed[6]. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations & specialization in different branches of the law is necessary.[7] The policy makers have therefore challenged those who are delivering pedagogic to ensure that there is consistency in the production of sustained improvement culminating in high quality of pedagogy in the tertiary institutions.[8] Past a decade we had seen various institutions adopted *e*-learning education of various courses as distance learning. During pandemic also we had adapted the shift from offline mode to online teaching through exhaustive platforms like LMS, Blackboard, zoom, Webex etc. Online learning was adapted quickly and has become part of higher education that was used prior but not extensively as post pandemic.

Anytime, anywhere, online and blended learning provide opportunities for learners to work more independently, expand their agency, intellectual horizon, learn to use tools and strategies that otherwise may not be feasible in classrooms for teaching-

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5 N. Pushpa vs The Secretary to Government on 8 October (2009), URL: https://indiankanoon.org/doc/1202918/

6 Mary Elizabeth Ryan, *Teaching Reflective Learning in Higher Education A Systematic Approach Using Pedagogic Patterns*, ISBN 978-3-319-09271-3, SPRINGER INTERNATIONAL PUBLISHING SWITZERLAND 31 (2015) DOI 10.1007/978-3-319-09271-3

7 See *Supra* note 2

8 Kola O. Odeku, *Training Law Academicians in the Art of Teaching and Learning: A Value Added Approach to Pedagogy*, E-ISSN 2039-2117, 4(14) MEDITERRANEAN JOURNAL OF SOCIAL SCIENCES, MCSER PUBLISHING 805-811 (2013). Doi:10.5901/mjss.2013.v4n14p805

learning and assessment, keeping in mind the detrimental effect of the internet and gadgets, judicious use of the internet may be monitored.[9] The informational nature of these technological artefacts in the educational field means that many activities can be carried out in a virtual environment.[10] Using active learning methods is more complex using than traditional teaching: it requires engaging students´ feelings and emotions in the learning process.[11] Teaching as performance is not merely an empty cliché, but functions as powerful metaphor and heuristic that provides careful insights into what it means for bodies to teach and learn.[12] Information revolution, together with computer technology, is 'reontologizing' our world, it is appropriate in the pedagogy of our time to pay attention to the new configuration of the environment, also to the new environments generated from virtualisation and living in the digital realm[13]. It seems critical that real world learning, like other areas of academic development and pedagogy within higher education, is scrutinized and debated.[14] In the New Education policy, 2020 even though provisions have been made for digital education, yet it has not prescribed for virtual classroom education as a serious alternative to physical classroom viz-a-viz access to education.[15]

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[9] Justice for All v. Government of NCT of Delhi & Ors on 18 September (2020) URL: https://indiankanoon.org/doc/68322878/

[10] Antonio Víctor Martín-García, *Blended Learning: Convergence between Technology and Pedagogy*, ISBN 978-3-030-45780-8, SPRINGER NATURE SWITZERLAND AG 7 (2020). https://doi.org/10.1007/978-3-030-45781-5

[11] Birthe Lund and Tatiana Chemi, 'Dealing with Emotions A Pedagogical Challenge to Innovative Learning', ISBN: 978-94-6300-064-2, Sense Publishers, 2015. Pp. 4

[12] Chris McRae and Aubrey Huber, 'Creating Performances for Teaching and Learning A Practice Session for Pedagogy', ISBN 978-3-319-54560-8, Palgrave Macmillan, 2017. Pp. 2. DOI 10.1007/978-3-319-54561-5

[13] See *Supra* note 10, 8

[14] Dawn A. Morley and Md Golam Jamil, *Applied Pedagogies for Higher Education Real World Learning and Innovation across the Curriculum*, ISBN 978-3-030-46950-4, PALGRAVE MACMILLAN, 30 (1st edn. 2021) https://doi.org/10.1007/978-3-030-46951-1

[15] See *Supra* note 9

To understand concept of Pedagogy we need to look what actually is pedagogy. Pedagogy innovations and experiential practical learning are required rather than theoretical knowledge. To this end, training becomes imperative for academics in order to keep abreast with the new skills and modes of maintaining and enhancing quality teaching and learning in the universities.[16] We need to understand the new terms that are being related with higher education in teaching learning process that are at follow-

a. **Pedagogy**: Most commonly understood as the approach to teaching, is the theory and practice of learning, and how this process influences, and is influenced by, the social, political and psychological development of learners (TES, 2018).[17]
b. **Andragogy**: The term "andragogy" was coined by Knowles (1980) to denote teaching and learning in adult education.[18]
c. **Heutagogy:** Otherwise known as self-determined learning (Hase & Kenyon, 2000), is a student-centred instructional strategy that emphasizes the development of autonomy, capacity and capability (Blaschke & Hase, 2015).[19]

Pedagogy in higher education is focused on teaching per se that is teacher centric wherein teacher is the catalyst in the teaching-learning process. Higher education plays a leading role in the formation of cultural values of society (Bakhov, 2014), increasing the scientific and intellectual potential of the country (Maravilhas, 2015), educating independent, initiative and responsible members of society capable of effectively interacting in the fulfilment of social, industrial and economic goals (Bhabha,

[16] See *Supra* note 8

[17] Ross Parker, David Coniam and Peter Falvey, *Free Learning A Student-Directed Pedagogy in Asia and Beyond*, ISBN: 978-1-003-15069-5, ROUTLEDGE TAYLOR & FRANCIS GROUP 4 (2022) DOI: 10.4324/9781003150695

[18] *Ibid.*

[19] *Ibid.*

2014).[20] Pedagogy is understood as a 'chalk and talk' method that is utilized in the classroom. The concept of heutagogy, however, has emerged from a process that started with pedagogy and proceeded through andragogy (methods and principles used in adult learning – see Knowles, 1980; Taylor & Hamdy, 2013) to reach heutagogy itself.[21]

Today pedagogy had shifted to andragogy or self-directed learning through asynchronous methodology used in LMS using audio, videos etc as tool of teaching. Because of which, we can see shift from teacher-centred learning to self-directed learning is emphasized in higher education. Moreover, emphasis is laid on experiential learning using different pedagogical innovation through synchronous and asynchronous methods in teaching-learning process. Teacher education needs to respond to the learning needs of the adult learner while modelling effective pedagogic practices and providing opportunities for practical teaching experiences.[22] The strong focus on learners acquiring a diverse set of competences requires a correspondingly strong focus on pedagogy.[23] The key pedagogy behind the project is active learning, with a range of strategies to promote:

- Creativity skills: inquisitive; open minded; imagination; problem-solving;
- Higher-order thinking skills, in particular: analyse; create; apply; evaluate;

[20] Tetiana V. Kononenko, Halyna V. Mukhina, Kateryna V. Ponomarenko & Olha O. Novikova, *Pedagogical Conditions of Developing Professional Culture in Law Students*, E-ISSN 1927-6052, 9(7) INTERNATIONAL JOURNAL OF HIGHER EDUCATION 36-46 (2020). https://doi.org/10.5430/ijhe.v9n7p36

[21] See *Supra* note 17

[22] See *Supra* note 6, 127

[23] Paniagua, A. and D. Istance, *Teachers as Designers of Learning Environments: The Importance of Innovative Pedagogies, Educational Research and Innovation*, OECD PUBLISHING 20 (2018). http://dx.doi.org/10.1787/9789264085374-en

- Active collaboration through peer learning / review and self-assessment; and
- Group evaluations.[24]

Higher education is equally balanced through experiential learning through different internal assessment like projects, tests, problem based question, peer review assessment etc. wherein different assignment given to the students using pedagogy, andragogy and heutagogy. Bonwell and Eison report students must engage in higher-order thinking tasks and analysis, synthesis, and evaluation in order to be actively involved.[25] Provision of models and exemplars is useful. However, we need to provide exemplars that relate directly to professional practice in law, being careful not to provide a template for students to simply regurgitate in their assignment.[26] Four case studies have been integrated into the three overarching themes of extraordinary work experience: accelerating professional confidence through immersive, high stakes learning, adding high value to aspects of practice pedagogy and recognising the negative aspects of practice learning and promoting the interdependence of theory and practice.[27] Smart pedagogy and smart technology are needs of the time. During pandemic the technology can proved relief to the institution to suddenly shift from offline to online mode using different virtual platforms that were made available. The use of ICT in higher education provides opportunities for faculty to develop pedagogically rich courses and improve teaching and

[24] *Id.*, at 163

[25] LeVon E. Wilson and Stephanie R. Sipe, *A Comparison of Active Learning and Traditional Pedagogical Styles in Business Law Classroom*, 31(1) JOURNAL OF LEGAL STUDIES EDUCATION 89-104 (2014).

[26] See *Supra* note 6, at 102

[27] See *Supra* note 14, at 147

learning.[28] The use of ICT increases the access to higher education offerings and provides institutions to reach new audiences regardless of physical location, as well as affords teachers' and students' enhanced temporal and geographic flexibility to manage their part of the educational process.[29]

While practical action research can be used to represent professional activity for continuous improvement, two sub-domains of pedagogical practice, *curriculum* and *technology*, are particularly significant.[30] This integration is driven by a general belief in the wider community that digital technology can offer new teaching and learning opportunities and modalities.[31] As Pineau articulates, understanding teaching as performance through a performance scholar–practitioner lens "offers a more theoretically sophisticated and methodologically innovative ground for developing new research agendas in educational performance".[32] An important place in the research is given to the systemic approach, which is realized during the analysis of the process of professional training of law students and its main components in multifaceted relationships (structure, interconnections of elements and phenomena, their subordination, hierarchy, functioning, integrity of development, system dynamics, essence and features, factors and conditions), which implicitly includes a number of methods, forms, means, which are revealed in the ways of educational actions of the subjects of research in the direction of acquiring professional knowledge, abilities and skills of future

[28] Tassos Anastasios Mikropoulos, *Research on e-Learning and ICT in Education Technological, Pedagogical and Instructional Perspectives*, ISBN 978-3-319-95059-4, SPRINGER NATURE 153 (2018). https://doi.org/10.1007/978-3-319-95059-4

[29] *Id.,* at 154

[30] See *Supra* note 6, at 215

[31] Kenn Fisher, *The Translational Design of Schools An Evidence-Based Approach to Aligning Pedagogy and Learning Environments*, ISBN: 978-94-6300-364-3, SENSE PUBLISHERS 202 (2016).

[32] See *Supra* note 12, at 2

lawyers[33]. In particular, the interdependency between the theory and practice in a students' programme of study is significant to the curriculum design and pedagogy of an extraordinary work experience.[34] Teachers with a more general orientation may be better able to assess the wider implications of black letter law and prove more adept at introducing liberal perspectives to the law curriculum.[35] Within this educational context, where it could be argued that the new higher education paradigm has created a generation of market-dependent students and employment focused curriculums, it is perhaps difficult to see how the core principles driving critical pedagogy and critical legal studies fit here.[36] The theory-practice divide is often positioned as extremes on an education-training continuum which is counter-intuitive to a continual and explicit articulation of applied pedagogy to the students' learning.[37] Transformative learning in the context of higher education requires major shifts in university structures and learning environments to enable critically reflective, inter/transdisciplinary, experiential, and place-based learning to emerge.[38]

## II. Practical aspect part of pedagogy

According to the critics, the didactic methods of the teacher-centric traditional learning model encourage passivity

[33] See *Supra* note 20

[34] See *Supra* note 14, at 159

[35] Peter Devonshire & Ian Brailsford, *Defining pedagogical standards and benchmarks for teaching performance in law schools: contrasting models in New Zealand and the United Kingdom*, The Law Teacher, 46:1 50-64 (2012) DOI: 10.1080/03069400.2012.644970

[36] Susanna Menis, *Non-traditional students and critical pedagogy: transformative practice and the teaching of criminal law, Teaching in Higher Education*, 22:2, 193-206 (2017) DOI: 10.1080/13562517.2016.1237492

[37] See *Supra* note 14, at 160

[38] Karen Lovett, *Diverse Pedagogical Approaches to Experiential Learning Multidisciplinary Case Studies, Reflections, and Strategies*, ISBN 978-3-030-42691-0, Springer Nature 95 (2020). https://doi.org/10.1007/978-3-030-42691-0

and fail to prepare contemporary students for the creative and often collaborative work environments of today.[39] The art of advocacy is acquired in the course of standing at the Bar!" Rendering justice is an art in itself and acquiring rudiments of art needs training.[40] The Rules of Legal Education deals with Moot court exercise and Internship as one of the papers of Compulsory Clinical Courses.[41] Rule 12 of Rules of Legal Education framed by the Bar Council of India under the provisions of the Advocates Act, 1961 further prescribe minimum attendance required as 70% of the classes held in the subject concerned as also Moot Court Room exercises, tutorial and practical training conducted in the subject taken together.[42] Legal role-play may allow law students to experience legal processes and develop client representation skills without setting foot in a courtroom.[43] As practical training was suggested by the Bar Council of India itself for being included in the curriculum to be prescribed by the Universities for Law students, it obviously became redundant for providing further practical training before enrolment of such trained graduates in Law.[44] This means that there is a need to embed approaches within teaching and learning that provide a context within which law students can engage in developing specific professional skills as well as the ability to think critically about their experiences and learning.[45] Therefore, from a pedagogical perspective, simulations

[39] *Id.,* at 167

[40] Law Commission Report on Training of Judicial Officers, URL: https://indiankanoon.org/doc/26952395/ (Last Visited on January 2022).

[41] Sri Gautham R vs Bar Council of India on 2 September, 2020. URL: https://indiankanoon.org/ doc/48079001/

[42] Choudhary Ali Zia Kabir vs Guru Gobind Singh Indraprastha on 18 August, 2010, URL: https://indiankanoon.org/doc/167884706/

[43] See *Supra* note 14, at 192

[44] V. Sudeer vs Bar Council of India & Anr. on 15 March, 1999. URL: https://indiankanoon.org/doc/1029236/

[45] See *Supra* note 6, at 93

and games occupy a space that sits between the classroom and the real world.[46]

Learning and Skill must both combine to constitute "Professional qualification".[47] The practice of doing things differently answers to a constructivist and pragmatic experiential approach that is well aware of the value of variety in pedagogy.[48] Decision-based learning (DBL) can be an effective pedagogy to address students' challenges with problem solving.[49] This could be one of the best methodology to give application based problems in which students can give their justification and analysis of problem on legal provisions where they use DBL. DBL pedagogy presents a possible way to help students conditionalize and schematize the conceptual and procedural knowledge as they learn new topics, such that when presented with a complex design scenario they are better suited to recognizing the fundamental questions or decisions needed to understand the complexities of the problem.[50] DBL pedagogy focuses on centering teaching around helping students "recognize meaningful patterns from concrete situations," or instructing students to know under which circumstances concepts and procedures are relevant, also known as conditional knowledge.[51] Students' acquisition of knowledge and participation in disciplinary practice can be supported through pedagogies such as inquiry- project-, and problem-based learning.[52]

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[46] See *Supra* note 14, at 192

[47] Kumari Anjana Mishra and Anr. vs Principal, K.M. Rustogi, M.L.B., AIR 1990 MP 120

[48] See *Supra* note 11, at 122

[49] Nancy Wentworth, Kenneth J. Plummer and Richard H. Swan, *Decision-Based Learning: An Innovative Pedagogy that Unpacks Expert Knowledge for the Novice Learner*, ISBN: 978-1-80043-202-4, EMERALD PUBLISHING LIMITED 32 (1st edn. 2021).

[50] *Id*., at 56

[51] *Id.*, at 121

[52] See *Supra* note 17, 36

Experiential Learning (EL) which is very broader term that has many aspects of pedagogical approaches and activities conducted during teaching learning process. EL is a process that involves active engagement and self-guided learning in a purposeful, immersive experience, as well as reflection and sense-making about that experience in order to transform it into knowledge that can be applied in subsequent experiences and contexts.[53] Active engagement in purposeful, immersive experiences can take many forms, from internships to community-engaged learning, student employment, education abroad, and more—there are numerous teaching and learning methods which can be included under the larger umbrella of EL (Roberts, 2016).[54] EL learning goals and objectives can also vary greatly; some experiences are intended to prepare students for specific professions, others are meant to help individuals achieve greater integration of classroom concepts and real-world problems, others are meant to enhance learners' problem-solving and leadership skills or intercultural competencies, and some attempt to do all of these and even more.[55] EL is well suited for those subjects and themes that are anchored in experimental and real-based projects, such as the sciences and social studies, or in subjects that are inherently based in practice.[56] Pedagogical innovations in the socio-emotional domain include, for instance, active and performance-based pedagogies that work on students' personal feelings and their relationships like role-playing, collaborative-based pedagogies, gaming, case study work, and social problem-solving (e.g. Rimm-Kaufman and Hulleman, 2015)[57].

[53] See *Supra* note 38, 2

[54] *Ibid.*

[55] *Ibid.*

[56] See *Supra* note 23, at 114

[57] *Id.*, at 60

Collaborative approaches like small group learning, and socially interactive pedagogies involving discussion, are especially important for promoting communication and emotional skills, as well as pro-social attitudes (e.g. Sprung et al., 2015)[58]. Sometimes, gamification is presented as a way to introduce new and complex skills to adolescents and adults, particularly in Computer Science or IT courses in higher education, while others have stressed early childhood and primary education, given the importance of play at these ages and the more holistic approach of these educational levels (Dichev and Dicheva, 2017).[59] To achieve the goals in education three levels of reflection can be utilised that can be used by practitioners and these are technical rationality; practical action; and critical reflection.[60] According to Van Manen:

- *Technical rationality* focuses on classroom competency and effectiveness demonstrated by measurable outcomes;
- *Practical action* is where the teacher goes beyond technical rationality and becomes concerned with clarifying the assumptions and predispositions underlying competing pedagogical goals and with assessing educational consequences toward which a teaching action leads; and
- *Critical reflection* incorporates moral and ethical criteria such as whether important human needs are being met into the discourse about practical actions.[61]

Educators, here, are concerned with worth of knowledge and the social circumstances useful to students without distortions of personal bias.[62]

[58] *Ibid*.
[59] *Id*., at 97
[60] See *Supra* note 6., at 68
[61] *Ibid.*
[62] *Ibid.*

## III. Academia and Relation of Research and Teaching

Webster defines "education" as the process of educating or teaching. Educate is further defined as "to develop the knowledge, sill or character".[63] Thus, from these definitions, we might assume that the purpose of education is to develop the knowledge, skill or character of students.[64] The academic landscape is changing in the higher education because of the drive for excellence in teaching and learning, research and community development.[65] Universities and other institutions of higher education consider the employability of graduates and seek to provide them with the qualifications sought after by business and industry.[66] As educators and researchers in education we are aware of the inconsistency of pedagogy and pedagogical models that do not assimilate recent knowledge on learning processes, in order to inspire new ways to look at education and new practices.[67] Traditional methods of teaching have their place in academia, but EL offers an alternative way to develop knowledge and bridge the gap between professors and students.[68] Karin Fischer (2013, 49), writing for *The Chronicle of Higher Education*, quotes the owner of Sine Nomine Associates, Mr. Boyes, in a survey of a number of firms (including high-tech companies like Cisco and IBM), who said that current graduates lack fundamental abilities, such as "knowing how to think".[69] The survey itself notes that "job candidates are lacking most in written and oral communication

[63] Jaypee Institute of Information vs Director General of Income Tax on 21 August (2009), URL: https://indiankanoon.org/doc/22522749/

[64] *Ibid.*

[65] See *Supra* note 8

[66] Gordon E. Slethaug and Jane Vinther, *International Teaching and Learning at Universities Achieving Equilibrium with Local Culture and Pedagogy*, ISBN 978-1-137-47514-5, PALGRAVE MACMILLAN, 17 (1st edn. 2015) DOI 10.1057/9781137475145

[67] See *Supra* note 11, at x

[68] See *Supra* note 38, at vi

[69] See *Supra* note 66, at 21

skills, adaptability and managing multiple priorities, and making decisions and problem solving".[70] At the same time there should be greater emphasis on law-specific pedagogical training, to expose teachers to the distinct academic and vocational aspects of their discipline[71]. While generic staff development training provides a core of transferable skills, it is submitted that the demands of law teaching require subject-specific pedagogical knowledge.[72]

With regard to the issue of becoming academic law lecturers, few have received formal training on how to teach law at the university or have acquired understanding of how learning occurs during the course of teaching.[73] Learner-centred pedagogies, such as inquiry-based learning or collaborative learning, are particularly suitable in giving the learner an active role and promoting the application of key skills and attitudes.[74] The faculty is the one who can initiate the dialogue being in the leadership position in the class and teacher was the leader facilitates the discussion. Truth is not born nor is it to be found inside the head of an individual person, it is born *between people* collectively searching for truth, in the process of their dialogic interaction.[75] Dialogic pedagogy implies a shift towards encouraging students to 'retell in their own words' the matter of the curriculum, and a turn away from recitation practices and reproduction questioning.[76] *Dialogue and discussion*: these are

[70] *Ibid.*

[71] See *Supra* note 35

[72] *Ibid.*

[73] See *Supra* note 8

[74] See *Supra* note 23, at 20

[75] David Skidmore and Kyoko Murakami, *Dialogic Pedagogy the Importance of Dialogue in Teaching and Learning*, ISBN-13: 978-1-78309-621-3, MULTILINGUAL MATTERS/CHANNEL VIEW PUBLICATIONS 37 (2016)

[76] *Id*., at 33

dynamic tools that allow students to express their views.[77] Even if information literacy were a priority in academia, higher education now has a maze of delivery options such that the student in the live classroom is only one scenario among several.[78] Instead, they show a need to experiment with employing different curriculum delivery techniques depending on content and class rather than a single pedagogical style.[79] The category of "who is talking" refers both to student-to-student and to instructor-to-student talk and includes all dialogue components (e.g., questions posed, answers or suggestions offered, etc.) regardless of the activity taking place.[80]

Another important aspect in academics is technological knowledge. There are academics who affirm that pedagogical considerations are crucial in the use of technology in education, but, in reality, educators, although aware that technological solutions can be used, are often unprepared for their meaningful.[81] Information and communication technologies (ICTs) have their unique characteristics and thus afford specific actions.[82] In the field of education, the unique features of ICTs "afford actions that may be used in teaching and learning and consequently lead to learning benefits".[83] Learning Management System (LMS) is online platform that functions in systemic way which provided blended learning using synchronous and asynchronous method. LMS is a term used to indicate a platform employed to collect information about students, enable them to

[77] See *Supra* note 28, 94

[78] See *Supra* note 1, xxxv

[79] See *Supra* note 25

[80] See *Supra* note 28, 268

[81] Linda Daniela, *Didactics of Smart Pedagogy Smart Pedagogy for Technology Enhanced Learning*, ISBN 978-3-030-01550-3, SPRINGER NATURE AG 10 (2019) https://doi.org/10.1007/978-3-030-01551-0

[82] See *Supra* note 28, at v

[83] *Ibid.*

access online teaching materials and provide support for various types of learning that can be used both in the classroom and online, as well as through blended learning principles.[84] Pedagogical expertise is exercised through good classroom management, ensuring a supportive climate, and assessment. "Classroom management" is how teachers keep students organised, attentive and focused; "supportive climate" refers to the student teacher relationship and is high when teachers give positive and constructive feedback; "cognitive activation" means teaching that fosters student cognitive engagement with the subject matter.[85]

Now a day, many of the Universities prefer LMS for their organisation with different goals so that they can have strategic plans in curriculum and through this platform they can achieve the desired course objective and outcomes that can be mapped. These courses reinforce the university's expectation that teaching will be "research-based, innovative, challenging, responsive to the needs of diverse learners, and underpinned by sound disciplinary and pedagogical expertise".[86] The quality of education can be improved in a variety of ways: it is possible to change the content of learning, learning forms, learning methods and teaching aids by promoting the use of online teaching materials through the introduction of programming in learning content through digital learning materials, learning management systems (LMSs), learning platforms (LPs) and various other technological solutions in the learning process.[87] As online courses and distance education become more established as central modes for delivering higher education, librarians and other instructors must familiarize themselves with the unique needs, opportunities, and

[84] See *Supra* note 81, at 196
[85] See *Supra* note 23, at 21
[86] See *Supra* note 35
[87] See *Supra* note 81, at 192

challenges of facilitating information literacy in an online context; these include the creative use and integration of new technologies and the creation of a sense of community to facilitate interaction and support learning.[88]

Innovation in pedagogy, like any kind of innovation, takes existing ideas, tools or practices and brings them together in new ways to solve problems when current practice is not adequately meeting needs.[89] Davis (2018) provides a useful way to distinguish between the three main approaches described above: pedagogy provides scaffolding (e.g., learning lower-order skills to build up to higher order in time), andragogy provides structure (e.g., topics and outcomes to direct learning) and heutagogy provides the environment (e.g., resources to support learning).[90] Results from the study support the notion that cooperative learning is indeed an active pedagogy that works to foster higher academic achievement.[91]

## IV. Feedback to feedforward in teaching-learning

The social context and feedback is still necessary for the student to achieve some degree of confidence.[92] The use of feed forward, in familiarizing students with potentially complex environments that they will have to perform in a professional role in the future, embeds tacit knowledge into students' learning for future recall and builds confidence for the world of work, as long as the educationalist can articulate, against specific criteria, exactly how the student can improve.[93] The development of feedback processes to correct and ensure approximation to the

[88] See *Supra* note 1, at 205
[89] See *Supra* note 23, at 52
[90] See *Supra* note 17, at 22
[91] See *Supra* note 25
[92] See *Supra* note 11, at 72
[93] See *Supra* note 14, at 325

solution and that is to say, ensuring that the assessment criteria used to regulate the application and generalisation of what is learned in the partial solution of the current stage are shared, compared to what is expected to be learned in the next stage.[94] Tutorials are a good way of providing the student with more vivid feedback on their learning process, providing more personal knowledge of the student and establishing a relatively individualized relationship.[95] Students must be actively involved in offering examples questioning practices, and generating and receiving feedback to produce co-constituted knowledge.[96] Virtual submission of the activity allows the tutor to quickly access the information and offer feedback to the student, offering support and helping to prepare the content for the following virtual and face-to-face meetings according to the characteristics and peculiarities of each tutoring process.[97] Virtual environments can give feedback on questions that students are frequently missing, allowing gaps to be identified where content could be improved or new topics added for better understanding.[98]

Reflective of lifelong learning philosophy and evolving technologies, new pedagogical approaches reveal a shift not merely from instructivism to constructivism but to connectivism (Gerstein, 2013) and this is also framed as from pedagogy to andragogy to heutagogy (Wheeler, 2011).[99] A vibrant and holistic curriculum, rooted in students' curiosities and self-directed inquiries, their individual desires and their collective pursuits, is

[94] See *Supra* note 10, at 148
[95] *Id.*, at 227
[96] See *Supra* note 12, at 172
[97] See *Supra* note 10, at 242
[98] See *Supra* note 12, at 187
[99] See *Supra* note 17, at 190

a hopeful path into this transformation.[100] We need to find a way to get back to an approach that can make it possible for universities and other institutions of higher education to ensure that students will be given both useful knowledge and personal qualifications, which can balance personal needs with those of society to the benefit of all parties as well as democratic development.[101] The act of teaching and learning can be interpreted as political acts that can enable individuals to critically explore their own situation, understand the social context in which they are embedded and challenge their own position, thus laying the foundation for a critical pedagogy to develop.[102] Indeed, the use of critical pedagogy and critical legal teaching, especially within the twenty-first higher education framework, is important because they keep consciousness alive and help to dismantle social boundaries (Amsler 2010).[103] Moreover, on the one hand, critical pedagogy opens up the possibility to actively and critically produce knowledge rather than receive it, as defined by 'authority' (Kember 2001); while on the other hand, critical legal education enables 'bringing to consciousness the taken for granted in and about law' (Thomson 1990, 194) so that authentic understanding and critical reflection can be produced.[104]

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[100] Carlo Ricci and Conrad P. Pritscher, *Holistic Pedagogy the Self and Quality Willed Learning*, ISBN 978-3-319-14944-8, SPRINGER INTERNATIONAL PUBLISHING SWITZERLAND 215 (2015). DOI 10.1007/978-3-319-14944-8

[101] See *Supra* note 66, at 26

[102] Clare Woolhouse and Laura J. Nicholson, *Mentoring in Higher Education Case Studies of Peer Learning and Pedagogical Development*, ISBN 978-3-030-46890-3, SPRINGER NATURE SWITZERLAND AG 260 (2020). https://doi.org/10.1007/978-3-030-46890-3

[103] See *Supra* note 36

[104] *Ibid*.

## V. Conclusion

Legal profession with changing time had developed different pedagogy with the changing time. Lower-level thinking order to higher order has been emphasized with practical skills and knowledge with time. Reflective lifelong learning and progress of educational teaching-learning process has become vital object of legal profession and its education. In past few years educational sector has updated and faculties are promptly adapted the new technology of teaching which has prominently seen during the time of pandemic. Practical training through experts from the industries had provided the students with industries insight and requirement that helps to shape better professional education and this has become integral part of pedagogy wherein students are exposed to different skills, training and practical approach with critical analysis.

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## Chapter - 16

# RESEARCHING THIRD WORLD APPROACHES TO INTERNATIONAL LAW

*Swati Singh Parmar**

## I. Prelude

Third World Approaches to International Law[1] (*hereinafter* TWAIL), one of the critical international legal thoughts, questions the glorious assumption of neutrality of international law and the *universalization* of the *European* 'Law of Nations' as 'International Law'[2]. With multiple perspectives and latitudinal interpretations (viewing TWAIL either as political, social, or intellectual movement) providing a single and mutually agreed meaning and definition of TWAIL become onerous. TWAIL is 'intentionally open-ended'[3] and it renounces the traditional portrayal of international legal order as a universal[4], just and fair order[5] and reveals

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1 *See generally* Bhupinder S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INTERNATIONAL COMMUNITY LAW REVIEW (2006); Antony Anghie, *TWAIL: Past and Future*, INTERNATIONAL COMMUNITY LAW REVIEW (2008); Makau Mutua, *What is TWAIL?*, ASIAN SOCIETY OF INTERNATIONAL LAW PROCEEDINGS (2001).

2 *See* James Thuo Gathii, *International Law and Eurocentricity*, 9 EUROPEAN JOURNAL OF INTERNATIONAL LAW (1998).

3 Luis Eslava, *TWAIL Coordinates*, CRITICAL LEGAL THINKING, available at https://criticallegalthinking.com/2019/04/02/twail-coordinates/, on (Last Visited on 20 January 2022.

4 *See generally*, Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (2011).

5 *See also* B. S. Chimni, *A Just World Under Law: A View from the South*, 22 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW (2007).

the power dynamics between the portrayer[6] of international legal neutrality and the portrayed. Coming from the various scholars of the Third World[7] TWAIL has become an 'expansive, heterogeneous and polycentric dispersed network'.[8] TWAIL homogenizes the layered heterogeneous political, social, economic, cultural, and legal realities of the Third World and there should be a cautious realization of this while using the term 'TWAIL'.

'Third World' reflects the socio-political subjugated regions (colonized or semi-colonized once) of the world that remained non-aligned during the cold war. Other terms though may not be but used as synonymous to the Third World are 'developing world', 'Global South', and 'Geographical South'. Though polycentric and polyvocal, the common underlying thread among TWAIL scholarship is- *first*, it challenges the universalization of European legal thought and scholarship[9] (that underlies the contemporary structure of international law) within the imperial global frame and *second*, the continual experience of subjugation in the global legal order (*neo-colonialism*). James Thuo Gathii, a critical race theorist and TWAIL scholar, argues "notwithstanding guarantees of sovereign equality and self-determination, post-World War II reform continued the

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[6] *See generally*, G. Delanty, *Inventing Europe: Idea, Identity, Reality* (1995).

[7] 'Third World' is a semantic label constructed on the scales of development, socio-economic structures and surreptitiously on civilization. It refers to the 'marginalised', 'peripheral', 'poor', 'developing', and 'emergent' states in the international society. While First World refers to the industrial-democratic states like Europe, their allies and the United States, Second World refers to socialist-Communist States like Russia, China, Cuba and others, the Third World refers to the state that aligned neither with the Western bloc nor with the Eastern Bloc, for instance, states from Latin America, Africa, Asia, and Oceania.

[8] James Thuo Gathii, *TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography* 3 TRADE LAW & DEVELOPMENT 1 (2011).

[9] *See especially*, O. P. Ramon Hernandez, *The Internationalization of Francisco de Vitoria and Domingo de Soto* 15 FORDHAM INTERNATIONAL LAW JOURNAL (1991).

legacy of imperialism and Eurocentrism within international law".[10]

In the evolution of international law, besides exposing the *formal imperialism* that permeated the world with British, Spanish, French, and Portugal colonies in the Geographical South, TWAIL scholarship has also disclosed the *informal imperialism*. *Informal imperialism* refers to the continued colonial legacy inherent in international law and its structures today. Scholars lament international law to be a production site of economic inequality between states, especially by revealing the functioning of international financial institutions[11].

TWAIL scholarship reveals the crafting of a subjugated socio-cultural identity 'orient' by the 'occident' or the West[12]. Edward Said, a celebrated post-colonist scholar, in his book 'Orientalism', notes:

> "Orientalism as a discourse one cannot possibly understand the enormously systematic discipline by which European culture was able to manage-and even produce-the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period."[13]

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[10] James Thuo Gathii, *Book Review: Decolonising International Law: Development, Economic Growth and the Politics of Universality, Sundhya Pahuja (2011),* AMERICAN JOURNAL OF INTERNATIONAL LAW 107 (2012).

[11] *See* Donatella Alessandrini, *Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission* (2010); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2006); Jennifer L. Beard, *The Political Economy of Desire: Law, International Law, Development, and the Nation State* (2007).

[12] *See especially*, ALBERT MEMMI, THE COLONIZER AND THE COLONIZED (2013).

[13] EDWARD SAID, ORIENTALISM 11 (1978).

The coloniality has a continued presence[14] which is evident in the erasure of non-Western histories in International legal history, cultural injustices[15], epistemic injustice in international legal thought, unequal treaties[16] and the functioning of various international organizations. The TWAIL research has shown that coloniality traverses beyond the colonial and imperialist epochs. Ashis Nandy, a social theorist, known for his theoretical critiques of European colonialism, underscores:

> "Colonialism is an omnipotent presence; both the fixation and affiliation, to use two Sadiron categories, are conditioned by its biological field. It is like fate, no societal process can escape it. The tragedy of colonial annihilation and violence is more real and palpable than the strategies of the politically defeated societies and communities."[17]

## II. TWAIL- an Approach or a Method?

TWAIL scholars Antony Anghie and B. S. Chimni in one of their papers[18] discussed whether it is a method for

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[14] JEAN-PAUL SARTRE, COLONIALISM AND NEOCOLONIALISM (2001).

[15] *See generally*, Rajeev Bhargava, How should we respond to the Cultural Injustices of Colonialism? *in* REPARATIONS: INTERDISCIPLINARY INQUIRIES 215 (Jon Miller & Rahul Kumar, eds., 2007).

[16] *See* Anthony Aust, Unequal Treaties: A Response, *in* INTERROGATING THE TREATY: ESSAYS IN THE CONTEMPORARY LAW OF TREATIES, (Mathew Craven & Malgosia Fitzmaurice eds., 2005); Mathew Craven, *What happened to Unequal Treaties? The Continuities of Informal Empire,* 74 NORDIC JOURNAL OF INTERNATIONAL LAW (2005); Li Jiangfeng, *Equal or Unequal: Seeking a New Paradigm for the Misused Theory of Unequal Treaties in Contemporary International Law*, 38 HOUSTON JOURNAL OF INTERNATIONAL LAW (2016); Michael R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (2004).

[17] ASHIS NANDY, EXILED AT HOME, xiv (1998).

[18] Antony Anghie & B. S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflict* 2 CHINESE JOURNAL OF INTERNATIONAL LAW (2003).

determining the law or is an approach. If 'method' is taken to be a way of determining what is law, then TWAIL is not regarded as a method in the sense that analytical positivism and natural law are. The dilemma of TWAIL as a method and TWAIL as an approach needs to be analyzed, as this has a bearing on how the research methodology of TWAIL is to be understood and evaluated. But before any debate on whether TWAIL is a method of determining the content of law or it is an approach to law (like the critical legal approaches for example feminism, postmodernism), one must consider and evaluate the contextuality in which TWAIL developed. Another pertinent question arising from previous concern is that if TWAIL is taken as approach, whether it is meant to approach to Law or Justice?

The debate on TWAIL being a methodology or an approach overlooks one subtle yet significant point. TWAIL, sometimes, is relegated as not being a methodology to determine the content of law as Analytical Positivism or Natural law school are. The point that is often ignored is the contextuality of TWAIL thought- questioning the neutrality of international law by revealing the *unjust* international society. In this sense, more than an approach to law (which TWAIL is argued to be not), is TWAIL an approach to justice?

Nevertheless, traditional TWAIL scholars perceive that TWAIL does not determine the content of the law, and it may determine the philosophy of the content of the law. This root in the realization that those who are in power, determine what the law is. Therefore, the philosophy of the law will favour the power makers like the role of the Big Four in the Covenant of League of Nations, or the permanent five veto power-holders in the United Nations. In the case of the functioning of the International Financial Institutions and the role of developed nations, the increasing debt, and debt-

servicing liabilities of the underdeveloped and developing nations is a neo-colonial example of this.

## III. Broad Traditions in Legal Research & Placement of TWAIL

P. M. Cook treats research to be an exhaustive and diligent undertaking about a known problem, the findings of which ought to be an 'authentic verifiable contribution' to the relevant field of study[19]. L. V. Redman and A. V. H. Mory define research as a 'systematized effort' to discover knowledge.[20] Research in law, or legal research, entails a study of and in legal structure, doctrines, and functioning of law[21]. Legal research[22] requires one to study legal rules, principles, concepts, doctrines, theories, institutions, questions, cases decided by courts or a combination of some or all of them[23]. The difference that thinkers have pointed out between social sciences research and legal research, has shown a restrictive gauge of researcherity peculiar to legal research. Geoffrey Samuel highlights on legal research:

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[19] P. M. Cook, '*Phi Delta Kappa Fraternity*', cited in F. L. WHITNEY, THE ELEMENTS OF RESEARCH 21 (1948).

[20] L. V. REDMAN & A. V. H. MORY, THE ROMANCE OF RESEARCH 10 (1923).

[21] For a detailed understanding of legal research methods and methodologies, *see* C. M.BAST & M. HAWKINS, FOUNDATIONS OF LEGAL RESEARCH AND WRITING (2013); W. H. PUTMAN, LEGAL RESEARCH, ANALYSIS, AND WRITING (2013); P. CLINCH, LEGAL RESEARCH: A PRACTITIONER'S HANDBOOK (2013); C. CHATTERJEE, METHODS OF RESEARCH IN LAW (2000); D. STOTT, LEGAL RESEARCH (1999); M. VANHOECKE, METHODOLOGIES OF LEGAL RESEARCH (2011); D. WATKINS & M. BURTON (EDS.), RESEARCH METHODS IN LAW (2013).

[22] Yongliu Zheng proposes a theory of legal matrix with a horizontal and vertical axis depicting doctrinal and non-doctrinal research methods. Yongliu Zheng, *A Theory of Legal Matrix*, 102 ARSP: ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE / ARCHIVES FOR PHILOSOPHY OF LAW AND SOCIAL PHILOSOPHY (2016).

[23] M. ZAHRAA, RESEARCH METHODS FOR LAW POSTGRADUATE OVERSEAS STUDENTS (1998).

> "Law, like traditionalist theology, is a discipline that is governed by the researcherity paradigm and it is this paradigm that restricts it in its capacity to make an epistemological contribution to social science thinking."[24]

**A. Research 'in' Law: Expository Research ('Black letter law')**

Out of the two prominent known styles of research- *doctrinal* and *non-doctrinal (empirical)* - doctrinal research has traditionally dominated the field of legal research. For instance, in states like Canada and Australia, doctrinal legal research emerged as a predominant category of legal research[25]. Traditional legal research has given the primacy of doctrinal methods over the non-doctrinal ones. Doctrinal legal research[26], also referred to as theoretical and pure legal research, involves research in legal rules, regulations, and concepts by primarily studying the *black letter law* (primary and secondary legislation) and the court judgements. Doctrinal legal research is defined as "a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation".[27] Such a method does not navigate beyond the periphery of law for research and is confined to the black letter law and judgments for finding the answers to a given problem. The Black letter law method, employing expository

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[24] G. Samuel, *Is Law really a social science? A view from comparative law*, 67 CAMBRIDGE LAW JOURNAL (2017).

[25] H. Arthurs, *Law and Learning: Report to the Social Sciences and the Humanities Research Council of Canada by the Consultative Group on Research and Education in Law* (1983); D. Pearce, E. Campbell & D. Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987).

[26] *See generally,* E. L. Rubin, *Law and the Methodology of Law*, WINCONSIN LAW REVIEW (1997).

[27] Terry Hutchinson, *Valé Bunny Watson? Law Librarians, Law Libraries and Legal Research in the Post-internet Era*, 106 LAW LIBRARY JOURNAL (2014), at 584.

research and doctrinal methodology, involves deriving principles from existing legal rules and decided cases, to decipher or project an 'order, rationality and theoretical cohesion'[28]. Doctrinal legal research highlights the relevance of confining within the boundaries of law[29] and avoids any reference to the world beyond the law[30]. This constricting and restrictive researcherity of law flows from the glory of legal positivism to thrust upon rule-based approach and primacy of black letter law[31]. The doctrinal legal research pushed legal research to the paradoxes of self-reference system and eventually a self-validating discourse[32].

**B. Research 'about' Law: Law Reform Research ('Law in Context')**

With the realization of the interconnectedness of law and other fields and the impossibility of absolute detachment of law from other fields, non-doctrinal legal research made inroads into the discourse. Borrowings, of research methods, techniques, and subject content, from other disciplines, gave impetus to reform-oriented legal research. Terry Hutchinson avers:

> "[R]ealising that the scope of the doctrinal method is too constricting, academic lawyers are becoming eclectic in their use of research method. Legal scholars may not often utilise non-doctrinal methods

[28] Mike McConville & Wing Hong Chui, Introduction and Overview, *in* RESEARCH METHODS FOR LAW (McConville and Wing Hong Chui eds., 2017).

[29] E. J. Conry & D. C. L. Beck, *Meta-jurisprudence: The epistemology of law*, 33 AMERICAN BUSINESS LAW JOURNAL, 373-450.

[30] Mike McConville & Wing Hong Chui eds., *Research Methods for Law* 246 (2007).

[31] *See generally*, V. A. Bogdandy, *The past and promise of doctrinal constructivism: A strategy for responding to the challenges facing constitutional scholarship*, 7 EUROPE INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW (2009).

[32] Gunther Teubner, How the Law Thinks: Toward a Constructivist Epistemology of Law, *in* LEGAL THEORY AND THE SOCIAL SCIENCES (2010).

> themselves, but they do include the results of the use of these methods in their research. In this transitional time, legal academics are increasingly infusing evidence (and methods) from other disciplines into their reasoning to bolster their reform recommendations."[33]

Non-doctrinal legal research acknowledges the interplay of law with other disciplines and employs a shared frame of reference with different disciplines to approach legal research. Growingly, the need was felt to view the *law* in its *context* with other social[34], political, economic, and cultural processes that employed non- doctrinal methodology. 'Law in context' (*or* Law Reform research), as opposed to the 'black letter law' legal research, evolved as a legal tradition that departed from viewing law as a panacea: the law is not the cure for every (social, political, economic, and cultural) problem.

### C. Interdisciplinary Methodology: Fundamental Research

Law may be a solution to a few social, economic, political, or historical processes and situations, but at the same time, these situations may have arisen due to law. Law may be a panacea and may also be a disease. Law may be the causation of inequality[35], detriment to the marginalized[36],

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[33] Terry Hutchinson, *The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law*, 9 ERASMUS LAW REVIEW (2015).

[34] *See generally*, N. L. CHANNELS, SOCIAL SCIENCE METHODS IN THE LEGAL PROCESS (1985); J. H. SCHLEGEL, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE (1995).

[35] *See, for example*, Carroll Seron & Frank Munger, *Law and Inequality: Race, Gender…and, of Course, Class*, 22 ANNUAL REVIEW OF SOCIOLOGY (1996).

[36] *See, for example,* M.K. Tiwari, & S. S. Parmar, *Of Semiotics, the Marginalised and Laws During the Lockdown in India*, INTERNATIONAL JOURNAL FOR THE SEMIOTICS OF LAW (2022).

favouring the rich[37], poverty[38], juvenile delinquency[39], checkered application, economic problems[40], cultural lag[41], and social problems[42]. Especially the postmodern turn in sociological research brought several such textured and nuanced discourses in legal research. These anti-formal models of legal research, drawing research methods from meta-legal disciplines, bring us to interpretivist approach in law. The roots of research in critical legal studies- Postmodern legal studies research, Feminist legal research[43], Queer legal research, critical race theory research, Third World Approaches to International Law (TWAIL) research, Fourth World Approaches to International Law (FWAIL) research, Marxist World Approaches to International Law research, etc.

## IV. Research in TWAIL

The discussion in the above sections about the broad traditions in legal research is equally true about researching TWAIL. Critical consciousness that is the driving force of TWAIL research is highlighted by Paulo Freire as:

> "characterized by depth in the interpretation of problems; by the substitution of causal principles for magical explanations; by the testing of one's "findings" and by openness to revision; by the attempt to avoid

[37] *See, for example*, Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (2019).

[38] For a polemical account of how law perpetuates poverty, *see* Sara Sternberg Greene, *A Theory of Poverty: Legal Immobility*, 96 WASHINGTON UNIVERSITY LAW REVIEW (2019).

[39] *See, for example*, PAUL W. TAPPAN, CRIME, JUSTICE, AND CORRECTION (1960).

[40] *See, for example*, Ralph K. Winter, *Poverty, Economic Equality, and the Equal Protection Clause*, THE SUPREME COURT REVIEW (1972).

[41] WILLIAM F. OGBURN, SOCIAL CHANGE (1922).

[42] *See, for example*, Arnold M. Rose, *Law and the Causation of Social Problems*, 16 SOCIAL PROBLEMS (1968).

[43] *See generally,* K. T. Barlett, *Feminist Legal Methods*, 103 HARVARD LAW REVIEW (1990); L. Smith, What is Feminist Legal Research, THE EFFECTS OF FEMINIST APPROACHES ON RESEARCH METHODOLOGIES (W. Tomm ed., 1989)

> distortion when perceiving problems and to avoid preconceived notions when analyzing them; by refusing to transfer responsibility; by rejecting passive positions; by soundness of argumentation…"[44]

The research in and about TWAIL is built on the triumvirate of these considerations:

**A. Navigate beyond the Black Letter Law**

Confining International Law research to *black letter law* research (involving research in Conventions, treaties and judgments by International Courts and tribunals) may not give a solution to each given international legal research problem. International law has codified injustice and inequality and legalized what was illegitimate. The textbook example of this is placing the permanent membership of the victorious world powers (also known as the permanent five or the Big five) of World War II in Article 23 of the Charter of the United Nations and privileging them with the enormity of veto power in Article 27 of the Charter of United Nations.

**B. Question the neutral portrayal of International Law**

International Law is no panacea, but sometimes, the breeding ground for the inequalities amongst states of the international society. The universal and neutral portrayal of international law is a charade and a weak premise that can be revealed by TWAIL research. It critiques the hiding of the power dynamics that have long existed between the powerful and weaker states by masking neutrality on international law. Like, Antony Anghie, a decisive scholar in TWAIL, reveals

[44] PAULO FREIRE, EDUCATION FOR CRITICAL CONSCIOUSNESS 18 (1998).

that colonialism is central to the discourse of international law and not peripheral, as otherwise represented to be[45].

### C. Reliance on Interdisciplinarity

Integrating rigorous interdisciplinary research[46] on international law and autopoiesis[47] to understand and develop a system of law with establishing the missing relation to international politics, international history and others can prove to be a fruitful endeavour for just international society. International Law has strong reflections and effects from international relations, politics, sociology, and history[48]. M. Sornarajah revealed the competing views by the developed and developing states on foreign investment law, by contextualising law by historical, political, and economic perspectives[49]. Through these interdisciplinary perspectives, he averred the imperialistic origins and continued hostility towards developing states by foreign investment law. Adopting sociological, deconstructive, and other research methods can play a pivotal role in revealing the real function of international law and its role in international society. They discover the truth of international law's origin, strike an epistemic balance between the occident and the orient, international law's optics[50] and its contents.

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[45] ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2007).

[46] *See also* Charles W. Collier, *Interdisciplinary Legal Scholarship in Search of a Paradigm*, 42 DUKE LAW JOURNAL (1993).

[47] GUNTHER TEUBNER, LAW AS AN AUTOPOIETIC SYSTEM (1993).

[48] For a brief account of historical research in law, *see* D. Ibbetson, Historical Research in Law, *in* (M. Tushnet and P. Cane eds., 2005), THE OXFORD HANDBOOK OF LEGAL STUDIES.

[49] M. SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT (2021).

[50] For instance, the historian Anthony Pagden highlights Hugo Grotius's insistence on the indivisibility of sovereignty of European states while the divisibility of sovereignty of the non-European states in his article. Anthony Pagden, *The Empire's New Clothes: From Empire to Federation, Yesterday and Today*, 12 COMMON KNOWLEDGE (2006).

**D. History matters**

Existing international history[51] portrays the history of the first world as the history of international law and is a place that is disproportionately claimed by the first world's history, where the third world's contribution to the development of international law is unacknowledged and unappreciated. The existing international law and its processes can, thus, better be understood by the third world's perspective by employing historical methods of research. The relevance of history in international law research is captured by Luis Eslava's assertion:

> "Paying attention to these varied histories has allowed TWAILers to trace the co-constitution of international law and imperialism, and more generally to challenge international law's complacent linearity and unidimensionality by showing the skewed power dynamics that criss-cross the international legal order. At the same time, questioning the assumed history of international law has allowed TWAILers to excavate alternative international normative projects and movements that have had a South orientation"[52]

Historical School of law that focused on people's consciousness inspires the TWAIL methodology. But at the same time, there must be a caution against historical generalizations- lived experiences of the people would vary[53]

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[51] TWAIL places emphasis on history, *see* Anne Orford, *The Past as Law or History? The Relevance of Imperialism for Modern International Law* (IILJ WORKING PAPER, 2012/2).

[52] Luis Eslava, *TWAIL Coordinates*, CRITICAL LEGAL THINKING, on 2 April 2019, URL: https://criticallegalthinking.com/2019/04/02/twail-coordinates/.

[53] Taslim Olawale Elias, James Gathii, Makau wa Mutua, Ibironke Odumosu-Ayanu, Obiora Okafor, and Oji Umozurike have presented notable historical perspectives of pre-colonial Africa's contribution to international law.

from each other on the scales of typology of colonialism (exploitative colonialism, settler colonialism, etc.), type of colonial power (English, French, Portugal, and Spanish colonies), the extent of coloniality and others.

## V. Research Methods used by TWAIL Scholars

Luis Eslava argues that TWAIL is 'a movement, not a school; a network, not an institution'[54]. TWAIL, as not a school, does not depend on a particular research method or a specific category of research methods but has a mixed bag of methods influenced by diverse disciplines and attuned to the TWAIL perspectives. The research methods vary from doctrinal to empirical, arching from socio-legal to historical to uncover and address the visceral erasure of the third world in the international law discourse. There exists a platitude of different research methods that have been adopted by the TWAIL scholars who have coinciding, competing, and varying arguments, evidence, theories, and inferences from their historical and geographical experiences. To discuss each one of the TWAIL works is a mammoth exercise, and therefore, a few of the research methods used in TWAIL scholarship are listed below. A wide array of combinations of these methods exists and the following methods are non-exhaustive.

### A. Doctrinal – Intersection

TWAIL scholars often explore points of intersection between *third-worldism* and other critical enquiries from socio-legal research[55]. Such intersections are considered to

[54] See *Supra* note 52.

[55] For instance, Vasuki Nesiah, *Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship*, 16 HARVARD WOMEN'S LAW JOURNAL (1993); J. Oloka-Onyango & Sylvia Tamale, *"The Personal is Political," or Why Women's Rights Are Indeed Human Rights: An African Perspective on International Feminism,* 17 HUMAN RIGHTS QUARTERLY (1995).

be 'synergistic and mutually reinforcing'.[56] Global intersectionality gives impetus and clarity to the anti-imperial and decolonization studies[57]. Professor B. S. Chimni, a distinguished TWAIL scholar, in his book "International Law and World Order: A Critique of Contemporary Approaches"[58], drawing from class, gender and race studies, argues for integrating all these for a critical project in international law.

Professor James Thuo Gathii, an acclaimed anti-racism and anti-imperialism scholar, wrote an article titled "Writing Race and identity in a Global Context: What CRT and TWAIL can learn from each other". With the qualitative analytical method, he displays the points of learnings and sharing between the Critical Race Theory (CRT) and TWAIL[59].

Professor Ratna Kapur, known for TWAIL and postcolonial studies, in 2018 authored "Gender, Alterity and Human Rights Freedom in a Fishbowl". She argued how postcolonial sexual subjectivities (in TWAIL perspective) are constructed within human rights discourse.

**B. Doctrinal - Exploratory**

Professor B. S. Chimni authored a decisive article on TWAIL titled "Third World Approaches to International Law: A Manifesto" in 2006. He critiqued the existing international

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[56] Athena D. Mutua, Multidimensionality Is to Masculinities What Intersectionality Is to Feminism, 13 NEVADA LAW JOURNAL (2013).

[57] *See generally* Antony Anghie, Bhupinder Chimni, Karin Mickelson and Obiora C. Okafor (eds.), THE THIRD WORLD AND INTERNATIONAL ORDER (2003).

[58] B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2017).

[59] *See also*, Rob Knox, Race, Racialisation and Rivalry in the International Legal Order, *in* (Alexander Anievas, Nivi Manchanda, Robbie Shilliam eds., 2015), RACE AND RACISM IN INTERNATIONAL RELATIONS: CONFRONTING THE GLOBAL COLOR LINE.

law and proposed to devise strategies to create a world order based on social justice. He used doctrinal and exploratory legal research to problematize globalization and exposes the disadvantaged position of the third world because of globalization.

Carl Landauer wrote an article named 'Regionalism, Geography, and the International Legal Imagination'[60]. In the article, he unearths the strong narrative mode that international law adopted, overlooking the geographical specificity.

**C. Socio- Legal Textual Criticism**

Prof. B.S. Chimmi wrote an article "The Articles on State Responsibility and the Guiding Principles of Shared Responsibility: A TWAIL Perspective"[61]. Prof. Chimni uses a *content analysis* or a *text analysis* method from the penumbra of *qualitative*, *non-doctrinal* and *socio-legal research*. In this research, Prof. Chimni decodes the 'Articles on Responsibility of States for Internationally Wrongful Acts' (ARSIWA) to draw meaningful inferences from it from the TWAIL lens. He uncovers a difference between primary and secondary rules, which the ARISWA has otherwise overlooked.

**D. Socio-Historical Legal**

Research methods pivoting history have been a potent tool to reclaim the historical, epistemic, and normative imbalances between the geographical South and the global North. Scholars like Antony Anghie, through his

[60] Carl Landauer, *Regionalism, Geography, and the International Legal Imagination,* 11 CHICAGO JOURNAL OF INTERNATIONAL LAW (2011).

[61] B. S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INTERNATIONAL COMMUNITY LAW REVIEW (2006).

monumental book "Imperialism, Sovereignty and the Making of International Law"[62] in 2005 turned the international law discourse towards histories of international law[63]. Works by C. H. Alexandrowicz[64] arouse academic motivation to visit and revisit history to unearth the imbalanced contemporary international legal society. Historical methods assist in disentangling the legal problems embedded in the past[65]. The empirical method, combined with the historical, offers signposts to the ignored chronicles of international legal history. The historical method in TWAIL analyses how the past is read and inferred and its signification[66] for the existing international law and its processes.

Professor Partha Chatterjee has laid firm grounds for TWAIL scholars to draw historical research methods. In his celebrated book, "The Black Hole of Empire: History of a Global Practice of Power"[67], he discursively displays the ways in which the past is accessed and inferred from. The *sociological-historical* method that he engages shows the colonial encounters between Europeans and India. By

[62] ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2005).

[63] *See generally* Matt Craven, International Law and Its Histories, *in* TIME, HISTORY AND INTERNATIONAL LAW (2007).

[64] C. H. Alexandrowicz, *The Law of Nations in Global History* (2017). On Alexandrowicz'z contribution to international legal history, *see* Carl Landauer, *The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part I: Madras studies*, 7 LONDON REVIEW OF INTERNATIONAL LAW (2019); Carl Landauer, *The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part II: declension and the promise of renewal*, 9 LONDON REVIEW OF INTERNATIONAL LAW (2021).

[65] Bardo Fassbender & Anne Peters note that the 'Eurocentric story of international law…ignore(s) the violence, ruthlessness, and arrogance which accompanied the dissemination of Western rules, and the destruction of other legal cultures in which that dissemination resulted' *in* (Bardo Fassbender and Anne Peters eds., 2012), THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW at 1.

[66] Signification refers to the process of signifying. The two orders of signification are denotation (which are the signifier and the signified) and connotation (of the denotative sign).

[67] PARTHA CHATTERJEE, THE BLACK HOLE OF EMPIRE: HISTORY OF A GLOBAL PRACTICE OF POWER (2012).

situating his argument of 'forgetting' history by professional historians, he uses *value orientation* and *historical reasoning* to assert a history of the mythos.

### E. Historical-Narrative Inquiry Method

Combining historical research and narrative inquiry to international law is a qualitative research approach that has immense potential to add to the TWAIL perspective. As a textbook example of this research method, Carl Landauer narrates the works and contributions of C. H. Alexandrowicz in his articles in two parts[68]. The first part was titled 'The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part I: Madras studies'[69] published in 2019 and the second one 'The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part II: declension and the promise of renewal'[70] published in 2021.

### F. Empirical-Historical Legal

Nagendra Singh, an Indian international Lawyer, who also was appointed to the International Court of Justice, authored a book "Indian and International Law"[71]. This book was international legal history research that focused on ancient and pre-modern Indian texts and practices including the fourth century B. C. texts in Sanskrit in Kautilya's

[68] *See also* Carl Landauer, Taslim Olawale Elias, From British Colonial Law to Modern International Law, *in* (Jochen von Bernstorff & Philipp Dann, eds. 2019) THE BATTLE FOR INTERNATIONAL LAW, SOUTH-NORTH PERSPECTIVES ON THE DECOLONIZATION ERA.

[69] Carl Landauer, *The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part I: Madras studies*, 7 LONDON REVIEW OF INTERNATIONAL LAW (2019).

[70] Carl Landauer, *The Polish Rider: CH Alexandrowicz and the reorientation of international law, Part II: declension and the promise of renewal*, 9 LONDON REVIEW OF INTERNATIONAL LAW (2021).

[71] NAGENDRA SINGH, INDIA AND INTERNATIONAL LAW, Part A & B (1969).

*Arthasastra*. He contrasted these texts to modern international law to bring out similarities between the two.

Professor Prabhakar in his paper on "Indian Princely States and the 19th-century Transformation of the Law of Nations"[72] employed *evidence-based*, *empirical* and *historical* research method in law. This article adopts a *qualitative* research methodology that aims at a *subjective* approach to explore and understand the problems. With a bottom-up approach, it explores to know 'how' and 'when' by adopting a historical approach that analyses 'legal history versus historical law'. It is based on grounded theory which generates and develops a theory from data that the researcher collects through various sources like case laws and archival documents. Prof. Prabhakar in this article analyses the early case law fought by Indian Princely states at Privy Council in London and political documents for the study.

He brings out a curious account of the nineteenth century's 600 Indian princely states in the makeover of the *European* 'law of nations' to the *universal* 'international law'. Fetching in the legal and political texts reflecting the semi-sovereign status of the Mughal and Maratha regimes, the article highlights the native actors' role in international legal history that largely has remained overlooked and undervalued. Legal and political texts are used as *sources*, with political and financial contributions of the princely states as *evidence* to claim that Prof. Prabhakar avers. The *historical- empiricism* as dominant method of the article refutes the transporting of civilizational value and exposes

[72] Prabhakar Singh, *Indian Princely States and the 19th-century Transformation of the Law of Nations,*11 JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT (2020).

the hollow claim of normative scarcity in the Indian subcontinent.

**G. Doctrinal-Historical Legal**

Adil Hasan Khan in his chapter titled "Ghostly Visitation: "Questioning Heirs" and the Tragic Tasks of Narrating Bandung Futures"[73] applied *qualitative*, *non-doctrinal*, *historical*, and *exploratory* methods. His chapter's significance lies in the narration of Bandung conference and its legacies continued by international lawyers and theorists to its present relevance. The events, legacies and future of the Bandung conference are shown by Adil through an exploratory framework.

Mohammad Shahabuddin, an erudite scholar in post-coloniality and TWAIL, and a Professor at the University of Birmingham wrote a chapter titled "Nationalism, Imperialism, and Bandung': Nineteenth-Century Japan as a Prelude"[74]. In this, he tries to unmask the contradiction in Japan being an attendee of the Bandung Conference despite practising colonialism. He highlights how in history, Japan has been depicted as a country of a victim of war downplaying its imperial past by resorting to a *qualitative, non-doctrinal* and *historical* research method.

**H. International Legal Ethnographic- Empirical**

Luis Eslava, a critical international legal scholar, wrote a book named 'Local Space, Global Life: The Everyday

[73] Adil Hasan Khan, Ghostly Visitation: "Questioning Heirs" and the Tragic Tasks of Narrating Bandung Futures, *in* (Luis Eslava, Michael Fakhri, Vasuki Nesiah eds., 2017), BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW.

[74] Mohammad Shahabuddin, Nationalism, Imperialism, and Bandung: Nineteenth-Century Japan as a Prelude, *in* (Luis Eslava, Michael Fakhri, Vasuki Nesiah eds., 2017), BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW.

Operation of International Law and Development'[75]. He engages in unique international legal ethnographic research in suggesting an approach to study international law and the development project. He adopts an anthropological approach (to international norms, practices, institutions) and ethnographic research for the study of international law with its current emphasis on local jurisdictions. With a close reading of primary and secondary sources, he employs participant observation and semi-structured interviews with three groups of actors. This research showcases an endeavour in the *sociology of law* to show how illegal colonies in big cities are legalized, what are implications with Bogotá as *case study, etc.* The ethnographic approach to international law is an extremely useful tool for TWAIL scholars to understand the relationship between the North and the South, an example of which is Arturo Escobar's book 'Encountering Development: The Making and Unmaking of the Third World'[76].

## VI. Conclusion

The Eurocentric International Law can be viewed differently from the Global South. It is treated differently by the teachers, students, and international lawyers in the geographical South. As a critical academic approach, TWAIL addresses several such crossroads of contempt that the Global South has had towards international law. With a multitude of arguments, evidence, geographies, histories and experiences, TWAIL does not identify with a particular research method, rather depends on a variety of existing research methods and a combination of them. TWAIL

[75] LUIS ESLAVA, LOCAL SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT (2015).

[76] ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD WORLD (1995).

engages in a wide array of research methods most of which are inspired from and adopted by other disciplines like sociology, ethnography, history, along with philosophy. TWAIL unmasks the masquerade of neutrality of international law and the universality of *European* 'law of nations and the *universal* 'international law'. It also rues that the international law is not a supposed just and fair order as is widely accepted and applauded. This disguise in international law is divulged by the TWAIL approach with engaging research methods with crossdisciplinary range: from doctrinal to empirical, anthropological to ethnographical, textual analysis to historical empiricism, and the like. The myriad research methods thereby assist in viewing international law as it operates and engages with the Third World. It deconstructs different research methods and frameworks to study international law and processes by the TWAILers. This account of methodologies in TWAIL scholarship may be adopted by future authors. Also, the same may unleash a distinct critical research framework for the methodology scholars in time ahead.

# PART II

# RESEARCH METHODOLOGY

## Chapter - 1

# FUNDAMENTALS OF LEGAL RESEARCH

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## I. Introduction

As we know that whenever and wherever we go, we have certain questions in our mind. We want that all these questions should be answered. In the problems related to law same thing happen. There are lot many questions on any subject of law, and those questions are required to be answered. We can get these answers by conducting research, may be empirical research, analytical research, or experimental research. So far as the research is concerned, I would like to share that how we can formulate the research problem.

## II. Research and Problem Formulation

What is the meaning of research? There are several methods of obtaining answers to the questions which come to our mind. These methods can be formal or informal and research is one of the ways to find out answer to these questions. We can find out the answer to the question through research

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only. The research may be conducted by superficial study, deep study or thorough study. In technical terms we can define the term research, as a science, a systematic study and investigation in some field of knowledge, undertaken to establish facts of principles and to seek beyond the horizon of our knowledge, some truth or some reality. In simple words we can say that it is the system through which we can investigate in the field of any area which may be based on facts of principles to increase your knowledge based on some truth or some reality.

According to Manning, the research is the careful examination and exhaustive investigation of a specific subject matter, aiming to the advancement of mankind knowledge and revision of accepted conclusions in the light of newly discovered facts. It is said that we are not searching anything, we are researching what is already there, we are adding something, putting gloss on that and then we are arriving at our conclusion on the basis of the gloss. That is why the word research is there otherwise it would have been innovation. If there would have been word search, then there would have been innovation, as the word is research, it means we are putting gloss on the subject matter which is already there and by way of power and the application of our knowledge; we are discovering certain facts, new facts which add to the knowledge of mankind in that area. In simple words, if we talk of the research it is an enquiry of search or facts or truth based on original source of knowledge, so on the basis of this it is the truth of the original suit. It is also possible through observation of new facts and by formulation of new thoughts and ideas, so it is researcher's commemoration of all these factors, that we can conduct a successful and good research.

The research is the process of collecting data what we work, how we work in that while conducting the research. It

is the process of collecting, analysing and interpreting information in order to answer the question. We collect the data, we analyse them and we interpret them to get our answer to the question. A set of the skills to critically examine the aspect of issue of information by developing habit of questioning that is why it is said that when you are interacting with the students in the class room, you should inculcate the habit of asking the questions to the teacher so that all you have in your mind, can be communicated to the teacher so that the points which are fresh in their mind & they can increase their knowledge and can be satisfied. This is the questioning habit which is required for conducting a good research.

It is a systematic examination of the observing information to find the answers with a view to institute appropriate changes or effective solution to the issue. There may be, if you want to go to Haridwar from Dehradun, there are three alternative ways, first you can go through Saharanpur, second you can go via Rishikesh, third you can go directly to Haridwar. So out of these three, first rout can be followed for direct way from Dehradun to Haridwar, then via Saharanpur and to Haridwar and further via Rishikesh. You can find out new comfortable way so that you can have appropriate changes to make plan of your travel to that place. It is to find out the proper procedure. The procedure to be followed while conducting the research should be proper, methods should be proper, techniques should also to be proper which can be tested for their reliability and validity. It is said that if you have committed an act which leads to the offence, if that has been done in right way, even then that will be an offence because your ultimate result was the offence but if you have adopted wrong way and your act resulted not in committing any offence but because of the

wrong way, that may constitute an offence and you may be a party as conspirator in that offence.

**III. Research Design**

It should be based on certain objectives and without biasness. Two conditions are must for this purpose, number one, you should have certain objective in your mind and that should not be with any kind of bias. If you are selecting the topic with biasness in your mind, then it will be like that when the judge comes to the Court and the party agues and judge expresses his mind. In such a situation it is presumed that the Judge has become biased on the one side, so it is expected that judge should come with open mind. Likewise, the researcher should also have selected the topic with clear in mind without any bias so that you can arrive at a right conclusion. The approach should be based on quantitative/qualitative and academic discipline of your topic to find out the solution. Then procedure and the steps should be reliable, accurate and unbiased. So these fields are required to be taken care of while selecting the topic for research.

How you can generate the process of questioning the problem. General thinking process, idea is the jealousies for research. If you don't apply your mind, you will not be able to get any question in your mind. So for generation of idea in your mind and generation of question, ideas are required. Idea impacts our mind, when some idea come it has impact on our mind and we proceed further. Mind stimulates thinking process. Thinking process generates curiosity to find.

One can think in number of ways on a particular aspect. General presumption upon the ideas after reviewing

and search, we ultimately find what is needful. So it was thinking process which guides the scholar to go in a particular way. Thus, researcher will be able to find out a particular or good topic for conducting research.

What should be kept in mind while conducting the research, it should be useful and interesting. If you don't have any interest or inclination towards that subject, you will not be able to complete the research work. So, you should also keep in mind that it should be useful for others also, for the society and for the nation. It should carry innovative ideas about the purpose of conducting the research.

Then who will be the targeted readers or stake holders. Broader context of the problem, so you have to think the problem in broader context, with minimum questions if you will formulate 20 questions, 40 questions, 60 questions, you will not be able to consolidate them to make them comprehensive and you will not be able to find out the true solution.

Then it should relate to aims and objectives, you set for conducting the research. You should work as a critical inquirer. If you will have appreciating things every time, then you will not find the correct answer. That is why it is said, "……." those who criticize you, should be kept together so that if, as and when he will criticize, you will have a chance to improve so you should your minds should be have critical approach and so you can enquire in a better way interrogative mind application should be there.

**IV. Identifying the Way to Answer**

If following process is followed, you may be able to identify the answer in proper way. You have to identify the

characteristics of research. If you are conducting the research and following characteristics are not there, then you will not be able to conduct the research or you will fail to complete your research work. **First** is the control; control should be within your reach. If you are dependent on others for conducting the research, you will never be able to complete that. **Second** it should have regress and inventiveness; you should develop the habit to be regress and inventiveness in conducting the research so that you can go one step every day, every moment and every second. **Third** you have to be systematic and should be consistent in conducting the research. **Four** you have to ensure during conducting the research that your research is valid and verifiable and it should not be illegal, it should not be void, it should not be voidable or in any case it can be verifiable. If it is not verified and it cannot be verified then, your research will be an utter failure. **Five** empirical and communicative, the research may be based on empirical and communicative basis. **Six** there should be characteristics feature of being a critical in common sense. You should be critical, but at the same time you have to apply your common sense, you should understand common sense of the other people so that your criticism and your critical approach may not perhaps confirm the thinking of stake holders of people at a large their honesty and enthusiasm. **Seven** if you fail to have enthusiasm for getting answer to your question and if you are not honest in your work then you will not be able to complete the research.

**V. Kinds of Research**

There may be research based on the application which can be further divided in pure research and applied research.

**A. Pure Research**

Means developing and testing theories and hypothesis, as to the existing body of research means you are working for something new so whatever you want, you have conducted the research, you want to apply it on a particular set of norms then that will act something to that.

**B. Applied Research**

It is exploratory: it is based on the scientific research or laboratory-based research work mostly conducted to solve scientific and practical questions or policy formulation, administration and deep understanding of the phenomena. So these are the true facts of research application based or applied basis.

Objective as basis of research: You should have some objective in your mind while conducting the research and that objective should be co-relational. It should not be in isolation and should not be without relation. It should be co-relational and it may be explanatory or it may be exploratory.

**Explanatory research**: It means what is there, you are explaining that meaning which give meaning and content different than what is prevalent at that time. Exploratory means you are conducting the research in the laboratory and you are getting the answer/result.

Enquiry as basis of research: Enquiry basis of research may be based on the structured or quantitative research and unstructured and qualitative research.

## VI. Steps in Research Process

What steps are required for conducting the research? **Firstly**, you have to formulate the research problem. How research problem will be formulated. The idea I have already been discussed in previous pages, and **Secondly**, extensive literature review, so unless you have reviewed the literature available at the time of formulation of research problem, you will not be able to formulate the research problem in best way. So, review of literature or literature review is one of the pre-requisite conditions for having or formulating the best research problem.

**Thirdly** you have to develop the objectives. You have to formulate research design including sampling. So if you have to go for the research than you have to formulate the questionnaires. The author conducted the research on plight of HIV/AIDS patients in Six State of India. These States include Goa, Delhi, Rajasthan, MP, Bombay and Haryana. I have formulated three sets of questionnaires, one for HIV/AIDS persons, second is for the doctors, third is for the relatives of them. So that I can get the right answer and right solution to mitigate the problems which are being faced by the HIV/AIDS persons. Then the next step is the collection of data. You have to select the stake holders and compile the answers given by them, you have to collect and analyse those data so that you can get the right result.

**Generalisation and interpretation**: After analysis of data, you will be able to generalise and give different interpretation which suits your mind. So that way you will be able to give new dimension to the data which you have collected and analysed.

Preparation of report of formal right up of the conclusion reached. After having interpretation in a particular direction after application of your mind you will be able to prepare a best possible report and you will be able to reach the right conclusion.

From where we can get the source of research problem? There are four scenes which impel us to find out where the research problem lies, those are firstly, the people from where we can get the research problem. What problem they are facing, how they are being judged, that will be the basis for conducting the research or formulating the research problem. Secondly, is the problem itself, examining certain issues relating to loyalty in order to derive attitudes of the people towards the issue. Thirdly, is the programme and fourthly, are the phenomena. Phenomena are to establish the regularities.

There are, four main sources for finalising the research problem: **first**, to identify the broad area of your interest, **second**, reduce the broad area into sub area, **third** select according to your interest broad area into sub area, and **four** out of those sub area you can select a topic and the area which is of your interest.

Then raise research questions, put yourself, this is the area and what research questions you have in your mind, which is required to be answered.

Then formulate objective. Accordingly, you have to formulate objectives of your research and then assess your objectives whether objectives will be able to meet out the need of research or not, how, I will be able to reach to the objectives. Then check it again and step A, it is the literature review to prepare synopsis. So to prepare the synopsis you

have to select these things step by step so that you can formulate a best synopsis for presentation either for the research project or for the research work.

**VII. Research Hypothesis**

Why the hypothesis is required, how it can be formulated. So, what is hypothesis? It is an intelligent guess or prediction that gives direction to the researchers to answer the research question. Through the hypothesis, you can get direction to get the answer to your research question.

We will take up hypothesis first and then will take up research question.

**Hypotheses**: It is formal statement of the tentative or extended prediction or explanation of relationship between two or more variables under study. This is the formal or tentative predictions or explaining the relationship between the stake holders and your issues. It has to translate the research problem and objective into a clear manner or prediction of the expected research or outcomes of the study. So, it is the formal statement and it translates the research problem and objective into expected research. It is just like a learning objective and learning outcome. Learning objective is the hypothesis and learning outcome will be directed by the hypothesis. It is derived from research problem, Literature review and conceptual framework. All these three are sources of hypothesis.

First is the research problem, Second is literature review and Third is the conceptual framework which you have formulated.

The hypothesis is continuation in the research study. Therefore, if we don't go to the continuation of hypothesis in research study then it will be of no use, so we have to discuss the continuation of hypothesis in research study. It provides clarity to the research problem and research objective.

Let us try to reconcile co-relation between the research problem and research objective; is research problem according to your research objective or not? Your research problem should be able to satisfy the research objective which you have started in your research work. It explains or predicts the expected research or outcome of the research. So, it begins from laying down the foundation stone of the building to the finally handing over to the owner of the house by the builder. So, it is whole genesis of the research work. It indicates the type of research design. It attracts the research study and the process, how it will be conducted? How you should proceed? How you should formulate your research design? What type of research design you should formulate? Everything you can find out, trace and locate from the hypothesis itself. It identifies samples of the research study that is to be investigated or examined. So, from the hypothesis, you can also find out how you will be able to find the samples. How you will be able to locate the research stake holders, from where you can get the samples or data collection? It facilitates data collection, data analysis and data interpretation. So, in other words we can say hypothesis is that set of norms from where you can get everything right from beginning to last regarding the research work.

**The purpose and function of the hypothesis**: It offers explanation of the relationship between those variables, which can be empirically tested. This is the first concern of the hypothesis through which you can get the relationship; you can explain the relationship between variables that can

be empirically tested or through sample survey. Through it can be ascertained that the researcher has sufficient background to enable him or her to make suggestion in order to extend existing norms. How you will try to follow the process through which you can extend your knowledge? You can put gloss on your existing knowledge. It gives direction to an investigation. It structured the next phase in the investigation and therefore, furnishes continuity to the examination of the problem. So you can proceed as per continuity of the hypothesis, and the final solution lies in the hypothesis. So, hypothesis is the genera and other research work is specie.

**What are the characteristics of hypothesis:** It should elucidate the power. If your hypothesis is in simple words, then it will not be able to elucidate power of your research topic. It should strive to furnish acceptable explanation to the phenomena. It should give direction, if someone goes to the hypothesis, he should be able to understand that what phenomena has been taken over by the researcher for conducting the research. It must be verifiable, unless it is verifiable no one will accept your research work. It must be formulated in simple and understandable terms. It should be free from technicalities and ambiguity, so that it can be understood by everyone. It should correspond with the existing knowledge. If you have given extensively new thoughts, then it will have no relation with your existing knowledge and that way you will not be able to correlate your existing knowledge with the incoming knowledge. In such case you will not be able to put the gloss on your existing knowledge.

**When hypothesis is to be formulated:** Hypothesis is formulated after the problem has been stated, and the literature study has been under taken. So hypothesis can be

formulated after the problem has been finalised and for that you should have extensively reviewed the literature on the topic and completed your study of literature review on that particular topic. It is formulated when the researcher is totally aware of the theoretical and empirical background of the problem. So in other words we can say that you will be able to formulate the hypothesis only when you are totally aware of the problem, may be on the theoretical basis or on empirical basis.

**Types of hypothesis:** There are three types of hypothesis; **first** is the research hypothesis, **second** is null hypothesis and **third** is the testable hypothesis. Research hypothesis can again be of six types; associative hypothesis, causal hypothesis, non-directional hypothesis, directional hypothesis, complex hypothesis and simple hypothesis.

Null hypothesis can also be further divided under the four heads; simple hypothesis, complex hypothesis, causal hypothesis and associative hypothesis, and the third is the testable hypothesis.

**What is simple hypothesis?** Simple hypothesis predicts that there existed relationship between the independent variable and dependent variable. So if there are two set of norms which you have to follow, and two types of stake holders, then it proves that it is simple hypothesis as it predicts that there existed relationship between old and the new variables.

**Complex hypothesis:** If there are more than two or more independent and dependent variables. There in the first there are two, and in the second complex there are two or more than two.

**Directional hypothesis:** It predicts the direction of the relationship between independent and dependent variable, means how the stake holders, will view your problem and your expected solution. And how they are correlated, such for those directions are given by the directional hypothesis.

**Non directional hypothesis:** It predicts the relationship between independent variable and dependent variable, but does not specifically give direction about the relationship. How those relations can be established, or has been established such type of directions when given become directional hypothesis, when not given, it will become non directional hypothesis.

**Causal hypothesis:** Causal hypothesis predicts a cause and effect relationship or interconnection between independent variable and dependent variable. So, if cause and effect of relationship between the independent variable and dependent variable, is predicted then it becomes a causal hypothesis. It also predicts the effect of independent variable and the dependent variable. Cause and effect inter relationship and cause and effect of one or the other, like teacher student relationship influence students learning.

**Associative hypothesis:** It predicts associative relationship between the independent variable and the dependent variable. Where there is a change in any one of the variables, changes also occur in other variables. These can be of two types, positive association and negative association. At this stage you need not bother about the kind of the hypothesis because it is not possible for you to formulate the research problem or find out hypothesis of your research, because you will involve more in technicality and the practical aspects, but being as part of learning system, we have to have in our mind that what types of hypothesis we can have.

**Null hypothesis:** It is used for statistical testing and statistical interpretation. It is based on the empirical survey; particularly it predicts that there is no relationship between the independent variable and dependent variable. It says null to nullify the relationship, what has been sought in the simple hypothesis.

**Simple null hypothesis:** Where independent variable does not have any causal relationship with dependent variable, if there is no causal relationship between the dependent variable and independent variable. Then that will be a simple null hypothesis.

Complex null hypothesis, causal null hypothesis and associative null hypothesis, these kinds of hypotheses are not so important and are rarely used in legal research.

**Testable hypothesis**: Predicts relationship between the independent variable and the dependent variable, and these variables are stable or measurable. So, hypothesis should always be testable. If it cannot be tested and cannot be verified, then that hypothesis will be of no use and you will not be able to complete your research work in the right direction.

**Variables:** Research variables are defined as qualities, properties, characteristics, behaviours, attitudes, etc. of people, individual or growth, objects, situation and activities, etc. Variables are manipulate-able and measurable. These variables are based on those core courses of research problem.

**Types of research variables:** Research variables are of five types, independent variables, dependent variables,

extraneous variables, environmental variables and demographic variables.

**Independent variables**: Independent variable means the quality or property that can be manipulated by the researcher to cause and effect on the dependent variables. It is also called extraneous variable or treatment variable. So independent variables can be manipulated, based on the cause and effect, and it is mostly used in the experimental research.

**Dependent variable**: It is the quality or property or behavioural outcome that the researcher predicts, and that occurs in response to the manipulation, experimentation or treatment of the independent variables. It is also called outcome variable. What is the outcome of your research work that will be covered under the head dependent variables and extraneous variables? These are variables which are confined to types of relationship between independent and the dependent variables. So, these are confusing variables. They may be like main current, counter current and cross current, so confusing variables are the cross current. The cross variables which may interfere with independent variables and dependent variables both. The researchers should make an attempt to identify these extraneous variables before the research study initiated thereby control the influence of extraneous variables on the research study through a specific research design or through statistical manipulation. So, to understand the extraneous variables it facilitates you to formulate your research problem or hypothesis in such a way that there is no influence of extraneous variables while arriving at a conclusion, so that you can concentrate mostly on independent variables and dependent variables, and extraneous variables can be avoided as far as possible.

**The environmental variable:** These are the variables which are dependent on, where the research study is conducted. These variables are family background, social background, institutional set up, community set up, educational set up etc. So, environmental variables can be formulated keeping in view these backgrounds. These variables are also some type of extraneous variables. There may be some extraneous variables, if you will go in detail in the climate conditions or the family background, or the social background or institutional set up etc.

**Demographic variables:** These variables are the quality or property or characteristics of the subject under the research study and are collected to describe sample. These variables are also called the sample characteristics. So, when you are to find out the sample for conducting your research to make them stake holders, then the demographic variables will play a leading and important role.

What are the assumptions regarding these things. Unless you have some assumption, you will not be able to understand the change or you will not be able to find out the correct solution. Assumptions are the statement of the basic principle or facts that are established and are universally accepted as true on the basis of logic or reasoning without verification though they may not have been scientifically tested. So, you can assume certainty and those assumptions will play an important role in setting out your research problem in formulating your hypothesis. Assumptions are signals by the researcher from various sources. These sources are research study, theories, clinical fields etc. So, you can grow assumptions, you can pick up the assumptions from your review of literature on that subject because they are the main source of your motivation or persuasion for the research work and what is covered under the previous

research study. What theories they have performed and in what manner the stake holders have been questioned or selected or conducting the empirical research. You have to put certain limitations while formulating the hypothesis because you cannot find out solution of all the problems in your research work. You have to find out one /two of the solution, to one or two problems, so that you can find effective solution or can answer those questions in the best manner, otherwise if you will have 20 questions, you would not be able to satisfy others on the basis of the answers to all the 20 questions. So have minimum questions so that you can concentrate on those questions and you can find out the right answer. Limitations are the restrictions within a research study which reduces the credibility or generality of the research findings. The limitations of the research study are also called deep point of study. We can say in negative sense that these are not provided in your research because these were considered as the deep point in your research work that is why you have left them out. You have not answered those questions, even if, you have already answered and it is necessary to recognise the limitations of the research study which might influence the study. So if you are not able to recognise the utility of limitations of your research study, you will not be able to concentrate with full set of norms for answering questions of the research topic.

**Research questions:** As we have already discussed how to formulate the research problem, what are the qualities of the hypothesis, what mean by the term hypothesis? The hypothesis will be formulated on the basis of research questions. And the research questions should be based on the objective of the research work which you have undertaken and these research questions should be prepared on the basis of hypothesis. The research question is a question that researcher set out to answer. When you

have to develop a research question? These questions are developed in the mind and mind acts upon that and try to find out the solutions. When we talk of these questions in the formal research, that researchers set out in the file. Choosing the research question is an essential element of both quantitative and qualitative research. For both type of qualitative and quantitative research it is essential to choose the research question. Investigation will require data collection and analysis. So, unless you have investigated the facts, collected some data and analysed them you will not be able to find out the research question in proper manner. Good research question improves knowledge on an important topic and are usually narrow and decisive. The research question should not cover 3-4 topics. It should be simple one. It should be based on the idea that we are to improve our knowledge on an important topic which has been assigned to us for conducting the research. So, they should be usually narrow and specific. To formulate research question, one must determine what type of study will be conducted such as qualitative, quantitative or mixed research. Following criteria can be used for constructing the research question. These are the final and report matter.

**Final criteria**: Final is the idea and principle and not a person, which we have discussed. It has been developed by Colin in the book "Designing Clinical Research". According to him final criteria is a method that can be useful tool or outlining research criteria used in the construction of a research question. You have the flexibilities of the criteria. This method may be used for a variety of research in a view. So, it is most popular criteria which should be followed for formulating the research problem. Through this final method of criteria, researcher can understand whether he has some interest in conducting the study which is meant for him. The researcher should also consider the ethical clarification as

well as the relevancy of a user. The final criteria highlight useful points that may increase the chances of developing the successful research project, or research work. Final means it should be feasible, with adequate number of subjects, adequate technical expertise and affordable in terms of time and money. If you would not find the stake holders in number, then you will not be able to complete your research work. Similarly, if you will not have technical expertise in any particular area, you will not be able to get the research work completed.

**Affordable time and money**: It should be affordable in terms of time. If you have one year left for research work and that requires work for 8 hours per day and more and more money will be required to complete the research work you have to arrange for that.

**Manageable in the scope**: It should be within your span within your periphery so that you can manage it.

These points should be taken into consideration while formulating a research problem.

**Feasibility:** Research question should be feasible one and should be interesting getting the answer through interview by the investigator and community. So if you formulate a question it should be of interest to the stake holders. So, the question should be framed in such a way that everyone feels happy in answering those questions.

**The note**: It should be in such a way that it is in correction with the existing position and we are adding something more in that previous finding is ethical, amenable through study that institutional review approves it. So, if you will not follow

ethical norms in that case, your institution may not accept your research work.

**The relevance**: It should be based on scientific knowledge & it should be relevant to scientific knowledge to clinical and health policy and to future research. All these means should be kept in mind.

**Report criteria**: Report criteria are based on the evidence and it is specifically applicable in medical or social science and social studies structure. Social studies or social science do not cover the law, but we can make it applicable to laws. Such research may focus on assessment or variation, presence of problem as well as what may be causal factors with control and experiment. Therefore, you have to evaluate the respondents and the problems being faced by them and the answers given by them to your questions. This can be abbreviated as 'PICOT', here "P" indicates the problem, "I" indicates intervention and indicator, "C" indicates comparison of problems, "O" indicates outcome and "T" indicates thanks. It is rarely use by the legal researchers.

**Types and purpose of research questions**: How many types are there and what is the purpose of formulating the research questions? The research question serves two purposes. **Firstly**, what are those which are to be determined and **secondly**, where and what kind of research the writer will be looking for. So, it will determine that true research question which you will find? To understand what kind of research you want to conduct? It identifies the specific objective of the study or paper you will address. It is after going through the research question, you will be able to identify the specific objective of the study. Therefore, the writer must first identify the types of study i.e., qualitative or quantitative or mixed, before the research question is developed. So before

developing the research question, you have to keep three things in mind, **firstly** whether you want to conduct the qualitative study, quantitative study or mixed. **Secondly** what is qualitative study? And **thirdly** seems to learn why or how. So, the researcher must be directed at determining the 'what'. These questions will start with these words, what, why and how; questions about the research topic. For example; how did the company successfully market its new products? The sources needed for qualitative research critically include print and internet facts, written words, audio and visual media. So, for qualitative study-based research questions are mostly based on the print and internet text, means written words, the audio and visual media.

The quantitative study seems to learn where and when. So, the writer's research is mostly determining where or when the research topic. So, you have to keep these things in mind where or when the research, when of the research topic. Therefore, when drafting the research question for a quantitative study, the writer will need to ask where and when question about the topic should be there. Example is where the company should market its new product unlike a qualitative study. A quantitative study is mathematical analysis of the research topic. So, the writer's research consists of numbers and statistics. Quantitative study also falls into two categories. **First**, are the co-relational studies. The co-relational studies are both study in non-experimental requiring the writer to research relationship without manipulating and randomly select the subject of the research. The research question for a co-relational study may look like this. If you take a four-wheeler and go for long-distance travelling what will be effect of your travelling with the stomach disorder. On the other side what will be the effect of your non-travelling with the stomach disorder. This

is the co-relational study. Effect on eating disorder of distance from turtle computers.

**Second experimental studies**: An experimental study is experimental in what is required for the writer to manipulate and randomly select the subject of the research. The research question or an experimental study may look like this. The consumption of the fast food leads to eating disorder.

**Now we come to mixed study**: A mixed study indicates both qualitative and quantitative study. So the writer's research must be directed at determining, why or how, and what, where or when, of the research topic. Therefore, the writer will need to draft a research question for each study required for the assignment. The practical study may be expected to be between one to six research persons. So generally we should have minimum research questions so that we can find out the right solution or answer. Once the writer has determined the type of the study to be used and the specific objective, the writer must also consider whether the research question passes the "so what test".

"So what test": means the writer must construct evidence to convince the audience. Why the research is expected to add new or useful knowledge to the literature. To what extent you can convince the audience that is the answer to so what. What is the result of the research question?

**Types of research question**: The research question forms the basis and four units of a research project.

**Review of literature and study**: These questions help in the study and deciding the methodology, and also play vital role in inquiry, reporting and analysis studies of the research. So, it all depends upon the research question. The first active

step in the research is the research question. There are three types of research questions namely, descriptive, comparative and causal. It is, therefore, essential to know which question falls under which heading to increase the efficiency and accuracy of the research.

**Descriptive research question**: Descriptive research questions are used to assist the study that aims to describe something. Thus, they are the describing subject for example course conducted on public opinion. The aim of this study is to understand various public opinions which are mainly descriptive. Questions of such nature will start with how was, what amount, what is, what are, etc. comes under the heading of descriptive research question.

**Comparative research question**: These are used to analyse the difference between two or more groups on the dependent variables. Comparative research question begins with, what is the difference between, that is mainly it will be only comparative study. It may look into distinguishing features of the variables upon different aspects. Example study to determine the proportion of the males and females who wrote for two different political parties is comparative research. This is an example how we can set the question for the comparative research.

**The group research question**: It may be distinguished on the basis of gender. You can have variables, on the basis of generation, first generation, second generation, third generation, fourth generation like that and the educational level. So, if you will compare the gender, male, female and trans-genders, what is the percentage for educational purposes or business purposes etc. etc. Though on the basis of the education, you can set the stake holders or the respondents for conducting the research. The complexity of the comparative

research could be increased by the number of dependent variables. Primarily, the comparative research questions are meant to bring out the differences between two or more individuals, two or more groups.

**Causal research question**: When a research is aimed at, to find out whether a variable causes one or more outcome variables, it is called a causal or relationship research. It is the study of cause. Example; is that if the public opinion is affected by a recent event or cause. Causal research would try to understand what is the effect of that particular event is? So, you have to analyse what is the impact of Pulwama attack on the general elections conducted just after that, which will be a research like causal basis research. The research question tries to identify the relationship between different variables upon one or more groups. The two objectives of the causal research are identifying the cause and variables affected by it. In order to frame a causal research question, what is the relationship between should be followed by between or among it. So these are the words which can be used with, they will indicate that it is the type of causal research question.

**Preparation of Report**: When you are preparing the report, you have to keep in mind the research objective, what was your hypothesis, and what was your research question. All should be co-relatively understood first, and accordingly, you should prepare the report. The report should be prepared in such a manner that you can justify that what was my hypothesis, and I have proved it. What was my research question I have been able to answer of those questions. You can say by fulfilling the objectives of the research, you can write down the research report. So far as citation is concerned, there are lot many systems nowadays, you can use any one of which you want to use, and write references in that way.

**Is it luxury to prove the hypothesis**? There are certain Universities where they insist far formulating hypothesis. They don't insist for formulation of research questions. In some Universities we have research questions and we don't formulate hypothesis. But there is no harm in having both hypothesis as well as the research question just like the plan. If you want to construct a house, you go to the architect who will prepare your plan, what are your requirements, and accordingly he will prepare a plan and that plan will be handed over to the builder, and builder will construct the house so that plan is the hypothesis and the working of the builder is based on the plan. So research questions are mostly framed to satisfy the hypothesis. Therefore, there is no harm in having both hypothesis and research question, but you can have research questions only there is no harm in that also.

## Chapter - 2

# QUALITATIVE AND QUANTITATIVE METHODS OF RESEARCH

*A.K Malik**

## I. Qualitative Research

Qualitative research can be defined as a type of scientific research that tries to bridge the gap of incomplete information, systematically collect evidence, produce findings and there by seek answers to a problem as question. It is widely used in collecting and understanding specific information about the behaviour, opinion, values and other aspects of a particular community, culture or population. Qualitative research helps in providing an in-depth knowledge regarding human behaviour and tries to find out the reasons behind decision making tendencies of humans. Qualitative research is less interested in explaining phenomena than in understanding them.

It has several implications:

i) Helps in textual description of experience of people.
ii) Helps in identifying and explaining social norms, roles of gender, socio-economic status so on.
iii) Helps in identifying the behavioural phenomenon which cannot be quantified.
iv) Helps in collecting data under natural situations.

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v) Helps in determining those factors which are meaningful and are important to the respondents under study. The open ended questions used in the qualitative research provide a chance to unfold those facts which cannot be done with the help of close ended questions.

**A. Methods of Qualitative Research**

Following methods may be used in Qualitative Research

**i) Case Study**

In this method case means an individual, group, event, institution, or society etc. which is studied. It is sometimes also called as "Case History". History can be defined as putting events in a chronological order. So, case history is studying right from start till today. For example, if one is to prepare case history of an individual, he will have to study that person right from conception till today. The case study helps in providing an in-depth knowledge of the natural process or phenomena of a specific case under study. By observation, interview, questionnaire, documents, Psychological Tests data about the case may be collected. The final report of the case study provides a rich (That is, vivid and detailed) and holistic description of the case and its context. A case study method can be used to study a peculiar event or a person suffering from a disease. It can also be used to study institutions or systems. Since case study is in-depth, it requires not only time but attention as well from the researcher. With the help of case study lot of information may be gathered. Certain case studies are also longitudinal in nature where the study is carried out over a period of time. This method has some drawbacks also. Case study generally is

individual based or only few individuals as institutions can be studied. So the sample remains small hence results cannot be generalized. Further it is also time consuming and requires certain expertise on the part of researcher.

**ii) Interview**

This method is most commonly used in Qualitative research. Generally, interview is defined as face to face conversation between two or more than two persons. But with change of technology this definition now is obsolete. Bingham and Moore (1931) defined interview as "Conversation with Purpose". The name of the interview will be as per the purpose eg. Selection Interview, Diagnostic Interview, Research Interview etc.

There are three approaches to take interview:

a) Structured Interview
b) Unstructured Interview
c) Semi structured Interview

**a) Structured Interview**

In this method, questions to be asked are fixed and the same questions will be asked to all who are part of the study. The main advantage of this method is objectivity which means researcher is not biased. He is equal for all. But the main drawback is that if the respondents do not answer or avoids the question, researcher cannot ask indirect questions and cannot go in deep.

**b) Unstructured Interview**

In this format of interview questions are not fixed. The researcher is free to ask whatever is required. The main advantage of this type is if respondents avoid to answer questions may be asked indirectly by researcher that is why this interview is called depth interview. The main disadvantage of this technique is subjectivity because researcher is free to ask different question to the people taken into sample.

**c) Semi Structured**

In this method the topics are fixed but researcher is free to ask any question he feels necessary to ask.

Though with the development of technology the definition of face to face interaction has become obsolete but still this is one of the best definitions of interview because it gives two types of information i.e., Verbal and Nonverbal. Verbal is answers given by respondent whereas Nonverbal is the body language of the respondent which is called Kinesics. Body language may be used as additional information to know the validity of the answers.

**iii. Questionnaire Method**

In this questions are prepared by the researcher in the area which he is going to study. The printed form of these questions is given to respondents who will fill it.

Two types of Questions are generally flamed out

a) Open ended Questions.

b) Close ended Questions.

a) Open ended Questions are those where by writing one's views respondents are to answer the question.

b) Close ended questions are those where options are given and can be answered by selecting from those options. The questions may be Multiple Choice Questions (MCQ), fill in the blank, Right wrong, Match the alternator etc.

**Precautions in framing the Questions**

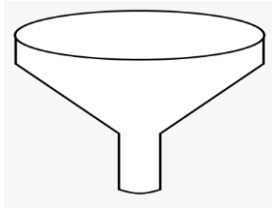
While framing the questions following case may be taken

- Language should be easy and up to the level of the respondents.
- Lengthy questions should be avoided.
- There should be no ambiguity. The Questions should be clear. Hathaway, Prof Emeritus Minnesota University, USA once commented that for the clarity of items even if you have to sacrifice the grammar sacrifice it.
- Idiomatic Questions should be avoided.
- If there is question for a particular sex, then its parallel form should be given.

**Arranging the Questions**

After formation putting questions in a serial order is big problem. Which question should be placed in the beginning and which question in the last. The method to arrange the questions serially is called Funnel method. In this method beginning questions should be general and

then specific questions should be asked gradually. It can be shown in the figure given below



**Ethnography**

This approach mainly focuses on the study of a particular Community. It is a more of a kind close field observation and basically tries to study a socio-cultural phenomenon. This method mainly involves study of participants in their naturalistic environment. Observation is widely used in this method and it is also less structured in nature. The researcher also plays an active role and more often than nonparticipant observation is used. Other methods like Interview, using documental sources are also employed. One the main advantage of ethnography is that Primary data is collected first hand and thus its validity in higher. There are draw backs also as lack of generalisation, inability to study. Cause and effect relation, ineffective description of what is observed and some ethical issues may creep in. Further, the problem employing ethnography is complex as the researcher may find it difficult to decide what to study and why to study it Further, when the problem and objectives of the study have been decided the researcher may find it difficult to get a smooth entry into that path particular community.

**Grounded Theory**

Grounded Theory was proposed by Glare and Strauss in 1907. This qualitative method focusses on discovering and relationship between an empirical investigation and theory. Thus, the data collection is carried out with an aim to promote development of theory from the data collected. Grounded, theory, and discovery are the three main concepts of grounded theory comparison. Constant besides denotes that data analyses comparison in grounded theory is initiated the moment data is collected and a comparison is carried out between the units of data or between the data units and probable explanations. In grounded theory, the data collected is analysed systematically and interpreted in order to generate a report that can then lead to development of a theory. The steps involved in grounded Theory include memorising, sorting and writing.

**II. Quantitative Research**

Quantitative research is a systematic investigation of a phenomenon by gathering quantifiable data and performing statistical analysis to find the results. One of the main characteristics of this type of research is that the results can be depicted in numerical form.

In quantitative search the basic concepts like variable, control techniques, experiment etc. are emerged. The word variable is derived from the word 'vary which means changeable.

The variable can be classified from different angles.

**From Measurement Point of view**:

From measurement point of view variables can be divided into two categories.

i) Qualitative Variables: When the measurement is done in terms of qualities like heavy-light, long-short etc.

ii) Quantitative Variables: When the measurement is done in number e.g. 5kg, 6 inch etc. Quantitative variables are of two types

a. Discrete variables
b. Continuous variables.

a. Discrete Variables: The numbers which cannot be further subdicided are called Discrete Variables e.g. Number of players in a team, number of family members etc.

b. Continuous Variables: The numbers which can be further subdivided are called continuous variables like length, time, money, weight etc.

**From Experimental Point of View:**

An experiment is observation under controlled conditions when data is collected quantitatively by experiment three types of variables emerge.

i) Independent Variable
ii) Dependent Variable
iii) Extraneous Variable

i) Independent Variable

Independent variable is any variable which can be manipulated by the Experimenter as per the requirement. Independent Variable can be divided into two parts.

- Type 'E' Independent Variable
- Type 'S' Independent Variable

Type 'E' independent variables are those variables which can be manipulated directly i.e. can be increased or decreased directly e.g. Noise, Light etc.

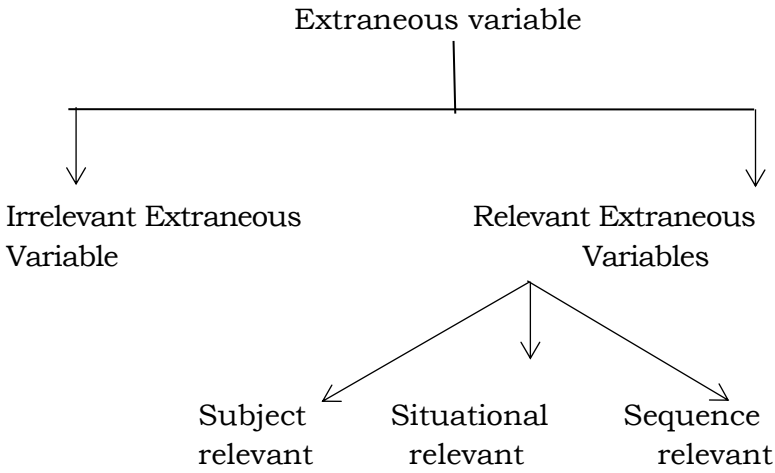
Type 'S' Variables are those which cannot be manipulated directly hence such variables are manipulated by the selection i.e. selecting the groups e.g. Age, Experience etc.

ii) Dependent Variable:

Dependent Variables are those which are affected by the Independent Variable. In a research what researcher wants to measure is Dependent Variable.

iii) Extraneous Variable:

Purpose of the research is to study the effect of independent variable on dependent variable. But in experimental situation certain other variables emerge and effect the dependent variable. In these variables researcher is not interested at all. Such variables are called Extraneous Variables. The Extraneous Variables can be classified like this.




Irrelevant extraneous variables are those which are present in the environment but do not influence the Dependent Variable. Relevant extraneous variables are those influence the Dependent Variable. Relevant extraneous variables are of three types (a) Subject Relevant Variables, (b) Situational Relevant Variables and (c) Sequence Relevant Variables. Subject relevant extraneous variables are those which are related with the personal characteristics of the subjects like age, sex, education etc. Situational relevants are those variables which appear in the experimental situation like Noise, Thunderstorm etc. Sequence relevant variables appear when the same subject is used in more than one situation in the research.

**A. Methods of Quantitative Research**

**i) Experimental Method:** Experiment is the observation under controlled conditions. In an experiment purpose is to study functional relation between Independent and Dependent variable. If other variables (Extraneous) are allowed to influence Dependent variable, however, any

change in Dependent variable could not be ascribed to variation of Independent Variable. We would not know which of the numerous variables caused the change. So researcher must, then control the experimental situation so that the extraneous variables can be dismissed from further consideration. The first step in this process is to identify them, what extraneous variables may be present in the experimental situation? Since it would be an almost endless task to list all of the variables that might affect the behaviour of an organism, our question must be more limited of all the variables present, which might conceivable affect our Dependents variable? There extraneous variables are controlled. There are different techniques to control extraneous variables.

**Techniques of Experiment Control:** Once extraneous variables are spotted then as per the requirement and conditions experimental control techniques are applied. There are five techniques of experimental control.

a. **Elimination**: The most desirable way to control extraneous variables is to eliminate them from experimental situation. Example may be using sound proof room to eliminate sound. All variables like previous experience, sex, level of motivation, age, intelligence etc. Cannot be eliminated.

b. **Constancy of Conditions**: when certain extraneous variables cannot be eliminated, we can attempt to hold them constant throughout the experiment, Control by this technique means essentially that whatever the extraneous variable, the same value of it is present for all subjects. For instance, time of the day is an important variable. May be people perform better on the dependent variable early in the morning than late in afternoon. In

order to hold time of day constant, we might introduce all subjects into the experimental situation at approximately the same hour on successive days of course this procedure would not really hold the amount of fatigue constant for all subjects on all days. But it would certainly help.

**c. Balancing:** When it is not convenient or possible to hold constant conditions in the experiment, the experimenter may resort to the technique of balancing out the effect of extraneous variables. There are two general situations in which balancing may be used (1) where the researcher is either unable or uninterested in identifying the extraneous variables; (2) where he can identify them and desires to take special steps to control them. Balancing may also be applied where there is more than one experimenter. In this case we merely need to have each experimenter run an equal number of the subjects in each group. To consider a situation that is a bit more complicated in which researcher wishes to balance the two effects: sex and experimenter. We have two groups, 60 subjects per group, two sexes and two experimenters. In such condition balancing arrangement will look like that is presented in the table given below.

Illustration of a Design where Experimenter and Sexual balanced

| **Group -I** | | **Group-II** | |
|---|---|---|---|
| 15 males- | Experimenter-1 | 15 males- | Experimenter- 1 |
| 15 males- | Experimenter- 2 | 15 males- | Experimenter- 2 |
| 15 females- | Experimenter- 1 | 15 females- | Experimenter- 1 |
| 15 females- | Experimenter- 2 | 15 females- | Experimenter- 2 |

**d. Counterbalancing:** Some experiments are designed in such a way that the same subject must serve under two or more different experimented conditions. If an experimenter is interested whether a stop light should be painted yellow or red, his problem would be to determine to which coloured sign a subject responds faster. To answer this question, he might measure a subject's reaction time to first yellow sign and then the red sign. By repeating this procedure with a number of subjects he could reach a conclusion, perhaps that reaction time to the red sign is the smaller. Since the subjects were first exposed to yellow sign, however, their reaction time to that sign would be partially dependent on their learning to operate the experimental apparatus and on their adaptation to the experimental situation. After they have learned how to operate the apparatus and adapted to the situation, they are exposed to red sign. Hence their lower reaction time to the red light might merely reflect practice and adaptation effects rather than effect of colour. Here colour sign and practice will be confounded so counterbalancing method may be applied. The application of this method would be to have half the subjects to the yellow light first and red light second, while the other half would experience the red sign first and the yellow sign second.

It can be presented in a tabular form given below

Demonstrating counterbalancing to control Extraneous Variable

| **Experimental Session** | | |
|---|---|---|
| ½ Subjects | Yellow Sign | Red Sign |
| ½ Subjects | Red Sign | Yellow Sign |

The general principle of the technique of counterbalancing may be stated as: Each condition (colour of sign) must be presented to each subject an equal number of times and each condition must occur an equal number of times at each practice session. Furthermore, each condition must precede and follow all other conditions an equal number of times. This principle is applicable to any number of conditions.

**d. Randomization:** This technique is useful for two general situations (1) where it is known that certain extraneous variables operate in the experimental situation, but is not feasible to apply one of the above techniques of control; (2) where we assume that some extraneous variables will operate, but cannot specify them and therefore cannot apply the other techniques. In either case we take precautions that enhance the likelihood of our assumption that the extraneous variables will randomize out i.e. that whatever their effects, they influence both groups to approximately the same extent. Such variables like previous experiences, level of motivation, money problems etc. may affect our dependent variable. Of course, the researcher cannot control such variables by any of the previous techniques. If, however, he has an experimental and a control group, say, and if he has randomly assigned subjects to two groups, he may assume that the effect of such variables is about the same on both groups.

<table>
<tr><th colspan="4">Determine Extraneous Variable</th></tr>
<tr><td>Those which probably won't influence the dependent variable</td><td colspan="3">Those that might reasonably influence the dependent variable</td></tr>
<tr><td>Ignore them</td><td>Those that can feasibly be controlled</td><td colspan="2">Those that cannot be feasibly controlled by first four techniques</td></tr>
<tr><td>Continue experiment</td><td>Apply control techniques</td><td>Those that will randomize out</td><td>Those that won't randomize out</td></tr>
<tr><td></td><td>Continue Experiment</td><td>Continue experiment</td><td>Abandon experiment</td></tr>
</table>

## III. Correlational Research

Correlation is a type of non-experimental research method in which a researcher measures two (or more) variables and understands and assesses the statistical relationship between them with no influence of extraneous variables. The correlation coefficient shows the correlation between two variables. A correlation coefficient is a statistical measure that calculates the strength of the relationship between two variables. When the correlation coefficient is close to +1, there is a high positive correlation between two variables. When the value is relative to -1 there is a negative correlation between the two variables. When the value is

close to zero, there is no relationship between the two variables.

For example, a researcher is studying a relation between age and crime. In this study, there are two variables age and crime. Let us say that marriage has a negative correlation with crime. It means higher the age, less the crime, and vice versa. However, this does not necessarily mean, as we grow up crime will be less. In correlational research, it is not possible to establish the fact what causes what. It means, cause-effect relationship is not established.

**A. Types of Correlational Research**

On the basis of correlation this research can be understood into three types:

i. Positive Correlation: A positive relation between two variables is when increment of one variable is followed by the increment of second variable or the decrement of one variable is followed by the decrement of second variable. For example, the amount of money a person has might positively correlate with the number of cars he owns.

ii. Negative Correlation: Negative correlation is literally the opposite of positive relations. Negative correlation means increment of one variable is followed by the decrement of second variable or vice versa. For example, higher the IQ poor marks in examination or lower IQ higher the marks in an examination.

iii. No Correlation (zero correlation): Zero correlation means a change in one variable may not necessarily see a

difference in the other variable. For example, being a millionaire and happiness are not correlated. An increase in money does not lead to happiness.

**When to Use Correlated Research**

Correlational research is ideal for gathering data quickly from natural settings that helps to generalize the findings to real life situations in an externally valid way. There are a few situations where correlational research is an appropriate choice.

a) To investigate non causal relationships

Correlational research may be used when one wants to find out if there is an association between two variables but researcher doesn't expect to find a causal relationship between them. Correlation research can provide insights into complete real world relationships, helping researchers to develop theories and make predictions.

For example, you want to know if there is any correlation between the number of children people have and which political party they vote for. You don't think having more children causes people to vote differently. It is more likely that both are influenced by other variables such as age, religion, ideology, and socioeconomic status. But a strong correlation could be useful for making predictions about voting patterns.

b) To explore causal relationships between variables

When a researcher thinks there is a causal relationship between two variables, but it is impractical, unethical, or too costly to conduct experimental research that

manipulates one of the variables. Correlational research can provide initial indications or additional support for theories about causal relationships. For example, investigator wants to investigate whether greenhouse gas emissions cause global warming. It is not practically possible to do an experiment that controls global emissions over time, but through observation and analysis, one can show a strong correlation that supports the theory.

c) To test new measurement tools

Researcher has developed a new instrument for measuring variables of interest and needs to test its reliability or validity. Correlational research can be used to assess whether a tool consistently or accurately measures the dimension it aims to measure. For example, you develop a new scale to measure loneliness in young children based on anecdotal evidence during lockdown. To validate this scale, you need to test whether it is actually measuring loneliness. You collect data on loneliness using three different measures, including the new scale and test the degree of correlation between the different measurements. Finding high correlation means the scale is valid.

**IV. Quasi Experimental Study**

Quasi experiments are studies that aim to evaluate interventions but that do not use randomization similar to randomized trials. Quasi experiments aim to demonstrate causality between an intervention and outcome. Quasi experimental studies can use both, pre intervention and post intervention measurements as well as non-randomly selected groups.

Using this basic definition, it is evident that many published studies in medical informatics utilize the quasi experimental design. Although the randomized controlled trials are generally considered to have the highest level of credibility with regard to assessing causality. But sometimes researchers often choose not to randomize the interventions for one or more reasons, like ethical considerations, difficulty of randomizing subjects and small available size of the sample.

Difference between quantitative and qualitative research:

| **Particulars** | **Quantitative** | **Qualitative** |
|---|---|---|
| Meaning | This method is used in order to obtain numerical data and facts by using statistical techniques. | This method is used in order to comprehend the functioning of human beings the way they feel and think. |
| Objective | Quantification of the data assessing numerals so that results can be generalized to the population | Qualitative comprehension of the event / phenomenon. No numerals are assigned. |
| Nature | Convergent (conclusive). Includes deductive reasoning. | Divergent (exploring). Includes inductive reasoning. |
| Sample size | Often a large sample is taken. | Sample could be small and sometimes a single case or unit or event or organization studied. |

| | | |
|---|---|---|
| Collection of data | Structured | Mostly unstructured |
| Tools used for data collection | Standardized and structured instruments are used | Interview, observation, questionnaire etc. are used. |
| Types of data | Numerical | Non numerical, like words images, behaviours and so on. |
| Analysis of data | Statistical techniques used | Content analysis themes used and categorization of data and patterns is carried out |

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## Chapter - 3

# RESEARCH AND PUBLICATION ETHICS: AN EASEMENTARY ESSAY

*Debasis Poddar**

> "*The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the 'social-worker'-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements.*"
>
> *Michel Foucault*[1]

## I. A Toddler's Toolkit

After an oft-quoted thumb rule in the given realm of knowledge profession, researchers are left with poles-apart alternatives with their works: 'publish or perish.' Also, there is another on its rise, no less axiomatic: 'publish and perish.' This essay is meant to cover the latter: 'publish and perish;' with special references to dos and don'ts vis-à-vis research and publication ethics. Thus, in course of getting the research publishable, there are plenty of pitfalls with

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[1] ALAN SHERIDAN (TR.), MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 304 (1977). URL: https://archive.org/details/disciplinepunish0000fouc_j5k6/page/304/mode/2up?view=theater&q=teacher-judge (Last Visited on 1 May, 2023)

potential to put hitherto reputation of the researcher in peril. Also, the naïve researchers may and do get trapped to avoidable trouble by mere mistake- rather than mischief- in their tryst for the publication of research. An otherwise innocent enterprise of these knowledge practitioners to publish thereby turns to self-sponsored project to perish their works. This forthcoming enterprise is meant to alert novice knowledge practitioners from major mistakes vis-à-vis avoidable void in course of enterprise for publication of research; more so for newer entrants getting their works published under the close circuit coverage of institutional sentinels across the board.

This toolkit, hereby scribbled by author-researcher (publicist who engages research) of this piece, is meant to share his trajectory of thought as a toddler in course of research and publication discourse with peers, rookie researcher-author (researcher who indulges in publication), in need of a toddler's toolkit. Besides the regular tutelage of coursework professors also, of research supervisors, peers may and do possess potential to leave constructive contribution to thought process of the rookie researcher.[1] Thus, a toolkit on research and publication supplements the pedagogy of knowledge practice in higher education institutions with ready referential; meant to supplement-with another to the inclusive inventory of study materials for coursework. The authorial intent lies in troubleshooting major

[1] Peers, or a group of people who have similar interests, age, background, or social status, serve as an important source of information, feedback, and support to individuals as they develop a sense of self. Peers help socialize an individual by reinforcing or punishing behaviours or interpersonal interactions. Betsi Little, *The Role of Peers in Personality Development*, in ZEIGLER-HILL, V., SHACKELFORD, T.K. (EDS) ENCYCLOPAEDIA OF PERSONALITY AND INDIVIDUAL DIFFERENCES (Springer 2020).
URL:https://link.springer.com/referenceworkentry/10.1007/978-3-319-24612-3_1931#citeas (Last Visited on 1 May 2023)

challenges in lived experience of the researchers; followed by policy advocacy for the knowledge profession and the practitioners alike.

**II. Precautionary Principles**

Corollary to one another, research and publication cannot get dissociated anyway. Academic publication ought to reflect research while research ought to reach readership through publication. In the contemporary age of documentation for public access to newer knowledge, therefore, publication appears a non-negotiable purpose for research; more so for research in social studies since- unlike research in natural sciences- discursive research in social studies discipline has hardly had self-operative application on its own. However, every sundry publication cannot carry the correct contents and reach the right readership. In forthcoming chapter, the author explores commonplace malpractices in the disguise of academic publication; thereby deplores the same with reasoning behind. Through circuitous routes, this effort is scribbled as a ready referential- with agenda to preach not to engage erratic practices likewise; lest average researchers accomplish publication without contribution for the sake of publication. All these caveats for care and caution apart, this easementary essay is also meant to school best practices vis-à-vis research and publication ethics; thereby get precautionary principles to avoid the void of 'publish and perish' customized by forthcoming policy advocacy to get them customized to the everyday usage. This inquiry is reflected by a series of 'wh'-questions: what to publish as research? (Inclusive of an innuendo, implicit therein: what not to publish as research?); also, how to publish research? (Inclusive of implicit innuendo: how not to publish research?); why to publish research? (Inclusive of implicit

innuendo, why not to publish all writings under the disguise of research?). Taken together, a baker's dozens of precautionary principles reflects a set of commandments commonplace for knowledge practice; while proceeding for academic publication with integrity. In the absence of due diligence in advance, irreversible damage takes place to the very reliability of publication, leaving long-lasting impact upon the reputation beyond carrying capacity of the publicist. In the best interest of research and researcher alike, the author extends policy advocacy to adopt care and caution with due diligence to publish work with appreciation; without apprehension to perish either the publication or the publicist.

Unlike tools and techniques of research, the precautionary principles are but meant to safeguard research and researchers from getting preyed by pitfalls along roadside. Thus, from attribution to contribution, an unwritten code of conduct for the academia- a policy regime with legitimacy rather than legality- reigns ethics governance in research and publication world to maintain academic integrity worldwide; with the following inventory of prescriptions (including proscriptions).

**A. Attribution**

Idea alone rules the world; more so for the world of research. Ideation, therefore, deserves due credit for attribution of the research. The researcher ought to trace the genesis of ideation for research in the subject; thereby engage re-search to trace the ideation back to its source. If the researcher remains informed of tributaries to the subject concerned, i.e., a set of 'wh'-questions: how, why and when (s)he took it up toward research, then (s)he turns blessed with the knowledge vis-à-vis attribution to get motivated to

re-search. Before entry to 'wh'-questions in substantive knowledge, knowledge practitioners ought to develop skill to decipher prior works, get polemics problematized with 'wh'-questions in procedural methodology.[2] The knowledge of attribution helps researchers proceed with the subject faster than one unaware of the skill for attribution. A materialist call for career prospect by means of the award of research degree alone ought not to enrich research since the same often than not falls short of motivation and turns to provocation; to the detriment of concentration. Besides, materialist call for better pay package or promotion alone by means of publication of information without wisdom for the sake of publication suffers from a similar void; just stated earlier.

More than head (read brain), the tributaries ought to get originated from the heart (read mind). While the head is often than not moved by external variables; e.g., societal ecosystem, professional market, institutional culture, etc., the mind is moved otherwise; albeit, rare exceptions apart. The mind often than not responds to the call of conscience; something with hyperlinks to the emotion (read passion), an internal mover entrenched to the soul with much more

[2] It is important to emphasize that the proposed methodology (generating research questions through problematization) in itself does not guarantee a successful problematization outcome. A whole range of other factors, such as creativity, imagination, reflexivity, range of knowledge mastered, and a broad understanding of different metatheoretical standpoints, is also critical. However, taken together, the methodology presented here offers a systematic approach for generating more novel research questions through problematization of existing literature.
Mats Alvesson and Jorgen Sandberg, *Generating Research Questions through Problematization*, 38(2) ACADEMY OF MANAGEMENT REVIEW 287 (2011).
URL:https://wiki.aalto.fi/download/attachments/59573826/Alvesson-Sandberg2011-generating+research+questons.pdf
(Last Visited on 1 May 2023)

sustainability than the reason (read sense). A fundamental point of difference lies here: emotion is proactive since it is moved by internality while reason is reactive since it is moved by externality in an ever-changing societal (dis)order.

**B. Interest/Passion**

Interest or passion toward the knowledge practice in specific subject concerned constitutes the next qualifier to research with the same. In the absence of interest or passion to study a subject, empty enterprise resembles rigorous knowledge incarceration or imprisonment. For instance, with little interest of the researcher, research in an area of specialization where senior supervisor is available, or research in an area of so-called market-oriented knowledge domain, may and does reduce to routine research without cutting-edge insight behind the content. Intelligence quotient is often than not connected to interest quotient; something pushed to backseat in contemporary times.

A larger conundrum but lies elsewhere. Whether and how far the supervisors should be agreed to guide researchers beyond the respective areas of specialization? The ideal response to this inquiry is negative. However, since idealism hardly reigns the research discourse in everyday lifeworld, midway is the default policy choice. Who will guide the first thesis on a newer discipline, for instance, artificial intelligence, while professors are not conversant with the same? Therefore, (wo)men with potential research acumen in professorial position possess professional responsibility to guide these newer subjects with their prior experience. At the same time, like other knowledge practitioners, professors may pick up newer subjects through skill development in respective areas of their choice as per individual research interests. Also, professors of relatively newer generation with

reasonably higher adaptability may be encouraged; followed by professional incentives to this end. In pursuit of newer discipline, no candidate or guide ought to get engaged in research programme against free will since research interests contribute to creativity and, in turn, to a corpus of newer knowledge. As per commonplace best practices, research in the newer subjects may be incentivized with comparative advantage to encourage candidates and guides alike toward the quest for avant-garde knowledge domain.

### C. Intent/purpose

The knowledge practitioners ought to focus upon intent or purpose behind research. If intent or purpose is legitimate, there is higher likelihood of research getting validated on ethical count. Inquiry for public purpose, progressive development, philosophical construct, etc., to name few among them, is taken into the inclusive count of legitimate research. Also, inquiry in pursuit of state-sponsored research enterprises or research enterprises sponsored by intergovernmental organizations in higher education institutions- public institutions in particular- ought to get validated by default likewise. However, inquiry in pursuit of selfish interest alone constitutes an illustration of illegitimate intent or purpose. Inquiry with *mala fide* intent or/and predetermined purposes to serve vested interest, e.g., economic (read commercial), social, or even political interests, deserves citation in residual occasions of illegitimacy; to gross detriment of integrity in knowledge profession. A teleological end of knowledge profession lies in the engagement of *bona fide* enterprise toward quest for truth. The knowledge practitioners ought to carry forward their respective research enterprises with professional integrity to this end.

Whether and how far truth is subject of falsification but poses a paradox. All hitherto regimes witnessed their respective truths getting falsified with the passage of their time. The Biblical truth, for instance, constructed a make-believe truth where the planet Earth was static, placed at the centre of the universe, and followed by an *a-priori* presupposition about all sundry celestial objects running around the Earth; after naïve realist epistemology. With his newly-invented tube (read telescope), Galileo derived a-posteriori precision vis-à-vis worldview to the contrary out of reason; a newer truth on its rise to contest superstition. Even with his invention, Galileo could not contest truth (read faith) of the then ruling regime:[3]

*LITTLE MONK: Don't you think the truth will prevail, even without us, if it is the truth?*

*GALILEO: No, no, no. Truth prevails only when we make it prevail. The triumph of reason can only be the triumph of reasoning men.*

Besides time variant, such as truth of the medieval age and truth of the modern age, truth business may and does turn volte-face also with space variant and well within the same time. For instance, if values (something instrumental to the making of law in a given society) are taken as insignia of dominant truth in their given time, the values may and do differ between one societal space and other. Illustrations from the normative regimes in family- a primary institution- may be taken into count to get the diversity of truth corroborated. Thus, myriad variants may be cited here to get diversity demonstrated in the context of family law regimes

[3] *Vide* Wolfgang Sauerlander and Ralph Manheirn (tr.), Bertolt Brecht, *The Life of Galileo* (1938). URL: https://cpb-ap-se2.wpmucdn.com/learn.stleonards.vic.edu.au/dist/7/135/files/2013/11/Life-of-Galileo-by-Brecht.pdf (Last Visited on 1 May 2023).

worldwide: marriage, divorce, abortion, succession, adoption, guardianship, maintenance, etc. all the spatial variants, taken together, perform another qualifier toward diversity (read plurality) in course of truth discourse. With its layers and flayers involved therein, truth is a discursive construct. In this ever-changing world, change alone is constant and truth- premised otherwise by public psyche- hardly constitutes exception to this end.

In forthcoming paragraphs, however, the author has had plan to run truth business afterwards, elsewhere, otherwise, with specific reference to ideologue Decalogue in particular; thereby explore diversity (read plurality) in course of truth discourse with reference to Kierkegaard, a pioneer author in mainstream philosophy; a discipline appurtenant to cognitive studies. He contested axiomatic objectivity of truth with his trajectory of understanding truth as the text is subjected to contextual subjectivity by default.

## D. Accession

Another teleological end of knowledge practice lies in the furtherance of knowledge. After the given etymology of research, meaning lies well within the term itself: 're-search,' work undertaken to acquire newer knowledge.[4] Taking stock

[4] Basic research is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view. Applied research is original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific, practical aim or objective. Experimental development is systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which is directed to producing new products or processes or to improving existing products or processes. Frascati Manual 2015: *Guidelines for Collecting and Reporting Data on Research and Experimental Development, The Management of Scientific, Technological and Innovation Activities*, OECD PUBLISHING, Paris 29 (2015). URL:

of hitherto spread of the existing knowledge in relevant discipline, therefore, is *sine qua non* for quest for newer knowledge. Thus, knowledge practice ought to get initiated with literature survey to take stock of prior work accomplished; thereby avoid the void of repetition of work accomplished meanwhile. Through systematic access to relevant prior works, knowledge practitioners zoom-in the vacuum left out by the ancestry; something to extend comparative advantage to the posterity. Thus, systematic literature survey facilitates researchers push knowledge further; thereby know the hitherto unknown areas in relevant discipline.

An oft-quoted phrase, despite ideation of literature from original Latin word '*littera*' (letters), literature review is but an inclusive phrase; meant to welcome relevant information derived even otherwise; irrespective of its prior existence in the written text (read scripture). Thus, subject to reliability, information derived from colloquial sources (read orature) deserves inclusion to the inventory of prior works without discrimination.

**E. Inquiry/Quest**

Posited at the centre of knowledge practice, inquiry or quest constitutes the mission of knowledge profession. Irrespective of precise perceivable presence vis-à-vis 'wh'-question- followed by mark of interrogation (?)- inquiry or quest makes a mark of its own in a way or other; thereby turns to locomotive of the enterprise for social studies

https://www.oecd-ilibrary.org/docserver/9789264239012-en.pdf?expires=1684471151&id=id&accname=guest&checksum=3B910A5AC5D7050A5ABEE71BBFA287A7 (Last Visited on 1 May, 2023)

research design.[5] However, the practice mentioned above has had no omnipresence in larger family of social studies research scholarship. For instance, a structured research enterprise for the award of degree in legal research often than not formulates research questions in technical sense of the term while similar enterprises for award of degrees in several other subjects of social studies discipline place the points of inquiry by means of statements; with no ceremonial usage of 'wh'-question with a classical mark of interrogation (?); thereby proving presence of inquiry with evidence. Dissertation for the award of degree apart, while reference books in the discipline of juridical studies getting published by the corporate professional houses, commonplace practice is otherwise. The author-researcher hereby extends policy advisory to the researcher-authors get adhered to commonplace practice; thereby avoid adventure lest the same may get reduced to misadventure despite no fault of their own. The Foucauldian normativity vis-à-vis normality discourse still reigns the academia worldwide;[6] as cited by the author-researcher meanwhile. More than publication in professional publishing houses Inc. (sic.), for all otherwise confident researcher-authors, what may prove prudent in final count is the publication of research *per se*; without compromise with the quality anyway.

No-fault risk apart, researchers ought to avoid the void attributable to themselves. The flawless formulation of a

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[5] When uncertainty comes to rest then vital concern with the problem in question dies. The end of doubt is the end of creative activity in thought. But inquiry creates new material for further possible inquiry.
Roberta Kevelson, *How's of Why's and Why's of How's Relation of Method and Cause in Inquiry*, Synthese, Jan. 1988, Vol. 74, No. 1, Knowledge-Seeking by Questioning, Part I, p. 93. URL https://www.jstor.org/stable/pdf/20116487.pdf?refreqid=excelsior%3Af84aa945a7740aef244fde98fee85f24&ab_segments=&origin=&initiator=&acceptTC=1 (Last Visited on 1 May, 2023).

[6] ALAN, See *Supra*, note 1.

worthy enough research questionnaire, for instance, requires round-the-clock rigour of potential researchers with otherwise great grasp in the subject. The intellectual technology includes myriad research methods with technical nitty-gritty and knowhow; something hardly connected to disciplinary depth in subjects concerned. Irrespective of disciplinary diversity, there are rudimentary rules to formulate questions. The knowledge practitioners ought to appreciate distinction between search question and research question. In the digital lifeworld, search question may at ease be answered by the search engines like Google while research question cannot be answered by search engine software likewise. The research question prompts one re-search unexplored answer to the question through systematic literature survey and consequent hypotheses; duly problematized with vacuum- if not void- in course of hitherto discourse.

Even in cases of inquiry or quest without question, this non-negotiable litmus test is applicable anyway. The nature and features of inquiry or quest ought to engage one re-search the subject with insight. Irrespective of question, research ought to engage one in quest of truth; tenable in the given time and space concerned. The positivist position with proposition for structured questionnaire as a testament of inquiry is meant to get inquiry about the inquiry or quest convenient to the institution since the want of inquiry in the structured questionnaire may be established by evaluation with objectivity while evaluation of the quest without questionnaire is by and large subjected to subjectivity. “Justice must be seen to be done,” as a century-old, yet with contemporary relevance, English judgment preached

likewise.[7] Questions- if scientifically formulated- bring in transparency to witness merit in the objective evaluation of research synopsis as seen to be done. In myriad other subjects of social studies discipline, evaluation of inquiry or quest on technical count is left to good faith.

### F. Credibility/Integrity

Insight apart, knowledge practitioners ought to usurp such unquestionable character and may get equated to Caesar's wife. The academia resembles a repository of conscience with ability and agility to call a spade a spade. The civilizational chronicles witnessed the same time and again. Besides faculty, researchers ought to possess integrity quotient beyond reasonable doubt. They are potential contenders for the coveted faculty position in time ahead. Therefore, academia ought to ascertain zero-tolerance policy in practice toward deficit vis-à-vis trust and faith; albeit, with optimal correctional opportunity to regain public confidence across the board.

Knowledge practitioners with questionable nature and/or features may and do suffer from default setback in the knowledge profession twice. First, research ought to get contested due to internal trust deficiency. Next, otherwise wise ideas and opinions ought to get left to the void of public avoidance out of external trust deficiency. Without regular domicile to native country, even if global laureates air ideologue monologue for their countrymen on due diligence

[7] "… it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."
LORD HEWART C.J., in *The King v. Sussex Justices*, *ex parte* MCCARTHY 259 (1923).
URL: https://ministryofinjustice.co.uk/r-v-sussex-justices-mccarthy-1924/ (Last Visited on 1 May 2023)

in the given state of affairs, the same is hardly heard by commoners; by courtesy, external trust deficiency. Internal trust deficiency, however, is more commonplace inside academia while researchers suffer setback out of poor credibility to the community vis-à-vis proof for veracity of reference and/or of polemics to get the discursive praxis problematized.

## G. Axiology/Ideology

Albeit often than not underestimated, axiology but constitutes a critical qualifier in the research lifeworld; something central to research and publication alike.[8] With occasional overlap, axiology and ideology but differ from one another despite both getting rooted to the genre of political philosophy. While the former involves more philosophy than politics, the latter involves just reverse. The researchers, therefore, concern axiology by default since the same corresponds to research and publication ethics. Ideology diverts researchers from quest for truth since the same is not falsifiable. Ideology resembles faith. The followers of ideology and faith act alike to establish the respective ideology and faith as synonymous to truth with blindfolded conviction that the same cannot be false.

While engaged in knowledge practice, researchers ought to refrain from reflection of their own ideology or opinion in course of research anyway. Such a reflection ought to subvert the very purpose of getting engaged in re-searching their subjects with objectivity. At the bottom of consciousness, the ideologue researchers possess their own respective version (read sub-version) and the same leaves researched finding eclipsed by version of their own; thereby

[8] Britannica. URL https://www.britannica.com/topic/appearance (Last Visited on 1 May, 2023).

set the default version out of researched findings aside- away from public reach- either by chance or by choice. In either case, even if published, they fall short of getting acknowledged as researchers. Thus, enterprises sponsored either by commercial establishments or social establishments remain charged with their own ideologies; pre-set by respective funding institutions. Consequently, those engaged in such research enterprises cannot afford to overreach institutional intent played out from behind. Even if it is sponsored by government and/or UN-agency, rules remain applicable as advisable to rest of the world meanwhile; provided that the impugned inquiry is run by institutional intent to reach a pro-establishment position irrespective of the empirical experiences to the contrary.

The quest for truth remains a central agenda for knowledge profession worldwide. Another *since qua non* to question- or even to contest- whatever untruth may lie in the subject requires knowledge practitioners' strength to attain independence from umpteen layers and flayers vis-à-vis static inertia to untruth. The following variants may be cited from an otherwise inclusive inventory: (i) independence from institution; (ii) independence from interest; and (iii) independence from individual self. They ought to overcome the control exerted by institutions in the interest of selfless quest for truth. Also, they ought to overcome the call of interests; pecuniary or otherwise. Last yet not least, they ought to transcend individual self to respond to the inner conscience; something like "that heaven of freedom", after *Tagoreana*:[9]

[9] Rabindranath Tagore, *Gitanjali: Song Offering* 35 (1913). URL:https://www.gutenberg.org/cache/epub/7164/pg7164-images.html (Last Visited on 1 May 2023)

> "*Where the mind is without fear and the head is held high;*
> *Where knowledge is free*
> … … …
> *Into that heaven of freedom, my Father, let my country awake.*"

A classic occasion where one transcends individual self may be cited by the story of Gandhian experiments with truth; written by none but Gandhi about his follies; something done by Gandhi, perhaps by him alone so far:[10]

> "*I pilfered the coppers when I was twelve or thirteen, possibly less. The other theft was committed when I was fifteen. In this case I stole a bit of gold out of my meat-eating brother's armlet. This brother had run into a debt of about twenty-five rupees. He had on his arm an armlet of solid gold. It was not difficult to clip a bit out of it.*
>
> "*Well, it was done, and the debt cleared. But this became more than I could bear. I resolved never to steal again. I also made up my mind to confess it to my father. But I did not dare to speak. Not that I was afraid of my father beating me. No. I do not recall his ever having beaten any of us. I was afraid of the pain that I should cause him. But I felt that the risk should be taken; that there could not be a cleansing without a clean confession.*

[10] M. K. GANDHI, AN AUTOBIOGRAPHY OR THE STORY OF MY EXPERIMENTS WITH TRUTH.
URL: https://www.mkgandhi.org/ebks/An-Autobiography.pdf (Last Visited on 1 May 2023).

> "*I decided at last to write out the confession, to submit it to my father and ask his forgiveness. I wrote it on a slip of paper and handed it to him myself. In this note not only did I confess my guilt, but I asked adequate punishment for it, and closed with a request to him not to punish himself for my offence. I also pledged myself never to steal in future.*"

More than ideology, it reflects insignia of getting freedom from egoism and the same has transcended his autobiography into a treatise of quest upon own self. In the ordeal to overcome self, knowledge practitioners ought to overcome call for position-power-purse; among others. Whatever antithetical to the quest of truth ought to get done away with; what is done with poison. A quest for truth deserves a mind free from fear and greed- calibrated with intelligence quotient and integrity quotient alike- also, unadulterated with extraneous consideration; something saleable in lieu of an agreement after contract (read free market) jurisprudence. "*The kingdom of God is within you*,"[11] St. Luke looked inward likewise long back. The spiritual seers of all sundry faith systems engaged research on the knowable universe since time immemorial with inquiry or quest to know about something otherwise unknowable by due diligence of available sensory organs. The modernization of methods apart, perennial human instinct to know the unknowable played critical qualifier toward progressive development of the society at large and the genesis lies in human instinct for spiritual quest to know material world in letters and spirit.[12]

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[11] The Gospel According to St. Luke (17:21), in *The King James Version of the Holy Bible*, 604. URL: https://www.holybooks.com/wp-content/uploads/2010/05/The-Holy-Bible-King-James-Version.pdf (Last Visited on 1 May 2023).

[12] Research is perhaps as old as mankind. If necessity was the mother of invention, it was also the mother of discovery. The primitive man's needs must have sent him in search not only of food, but also of knowledge.

Thus, Ideology and egoism jointly and severally extend speed-breaker to researchers on the knowledge highway.

## H. Method and Methodology

Confusion appears almost omnipresent in the very knowledge profession vis-à-vis method and methodology. At regular intervals of scientific quest for new knowledge, these two are stated interchangeably while they carry poles-apart nature and features. Knowledge practitioners across the world- also, those engaged in legal research- strive for skill development to learn nature and features of a method in its nitty-gritty. Methodology represents the epistemology functional behind research methods; thereby cements the castle of rationale behind methods. For instance, hypothesis is a method while rationale functional behind formulation of hypothesis contributes to methodology. Unlike amateur folklore, methodology refers to research on the epistemology of one or more research method(s) and, hardly connected to substantive research and methods for any sundry discipline anyway.

Thus, researchers engaged in substantive subjects- including Law- ought to focus upon the skill development in methods. Literature survey and research question apart, research hypothesis deserves due attention as another research method. Hypothesis is another method initiated by human instinct while research is on. No researcher proceeds without formulation of research hypothesis at the

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The process was basically the acquisition of knowledge, the quest for truth, the exploration of the unexplored.
Ranbir Singh *et al*, Digital Library- *Legal Education and Research*, NATIONAL LAW UNIVERSITY DELHI PRESS 1 (2010). URL: https://nludelhi.ac.in/download/publication/2015/Digital%20Library-Legal%20Educaiton%20and%20Research.pdf (Last Visited on 1 May 2023).

background of mindscape. A systematic formulation of research hypothesis ought to attract discursive attention of researchers toward nature and features of hypothesis;[13] including occasions where the hypothesis is not needed.[14] The author shares two techniques toward formulation of hypothesis as a research method, viz., (i) question after hypothesis, and (ii) hypothesis after question. These two routes apart, formulation of implicit hypothesis without explicit mention of hypothesis *per se* constitutes another research method elsewhere in the social studies discipline. Even such unstructured hypothesis ought to ascertain a discursive structure of its own; with technical knowhow available to all in the discipline concerned.

First, the question-hypothesis sequence is a method where, after survey of literature, a researcher formulates question and, thereafter, formulates hypothesis as initial response to the research question formulated meanwhile. This question-answer pattern of question-hypothesis is founded on whatever information is collated by the researcher in course of the survey of literature. Next,

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[13] 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.
Khushal Vibhute and Filipos Aynalem, *Legal Research Methods: Teaching Material*, Justice and Legal System Research Institute (2009).
URL: https://chilot.files.wordpress.com/2011/06/legal-research-methods.pdf (Last Visited on 1 May, 2023).

[14] 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'.
*Ibid.*

hypothesis-question sequence is another method where, after stocktaking of literature, the researcher formulates hypothesis and, thereafter, formulates question before proceeding for inquiry or quest accordingly. Apparent semblance apart, these two methods share similarity and dissimilarity alike; not too far, neither too near in final count. Taken together, either survey-question-hypothesis or survey-hypothesis-question ought to get interconnected to each other in course of research discourse. Since this survey continues till the end of research, initial research hypothesis is subjected either to be proved or disproved; by courtesy, with due course progress of inquiry or quest by researchers with the passage of time.

With reasoning of his own, the author hereby pleads arguendo for potential in the plurality of legal research methodology; something commonplace in lived experience anyway. Two research enterprises can never be identical to one another anyway. Thus, while engaged in quest for new knowledge, researcher works out the methodology with best practices and without gross departure from conventional method; commonplace in juridical research. Any gross departure with reasoning behind is subjected to approval of appropriate authority of the institution. All hitherto tutelages on research methods and methodology are meant to develop capacity and skill in researchers; thereby facilitate practitioners understand and appreciate the conventional legacy vis-à-vis intellectual technology concerned. The author has had authoritative document in defence of research policy advocacy mentioned above. The Indian Law Institute made clear and unambiguous mention of method and methodology one after other;[15] with identification of

[15] (Curriculum of) *Legal Research Methodology and Writing*, the Indian Law Institute, New Delhi. URL:

technical distinction between these two phrases by implications. There lies little an embargo vis-à-vis departure from either provided the same stands informed choice with reasoning behind such departure. Since publication is meant for the rank and file readership without involvement in the research progression, method remains metanarrative in publication discourse.

## I. Pedagogy/Tutelage

Either sooner or later, those slow-yet-steady ought to progress in knowledge practice. In knowledge practice, none remains teacher since each sundry member turns researcher. Therefore, mentor and mentee, all are alike. In final count, mentor is one with more skill acquired with the passage of time. There is likelihood for mentee getting well-groomed to exceed mentor in time ahead. Besides acknowledgement to talent of the mentee, credit is due to the mentor who could groom the mentee likewise. The mentee deserves due credit since research reflects the originality of thought; something not at all transferable to others even by means of teaching-learning-evaluating enterprise. A talented researcher is self-taught by default.[16] Thus, researchers need not treat their faculty colleagues as pedagogues since researchers require intellectual art and the same ought to be acquired by capacity-building alone. At the best, with tutelage in course of coursework, conventional research methods and methodology may be shared by the seasoned professors;

https://ili.ac.in/Legal%20Research%20Methodology%20and%20Writing.pdf (Last Visited on 1 May, 2023).

[16] Education is the manifestation of the perfection already in man. Vivekananda, *What we Believe in* (1894), in COMPLETE WORKS OF SWAMI VIVEKANANDA, Vol. 4, Writing: Prose. URL: https://ia802802.us.archive.org/30/items/completeworksofswamivivekananda_ninevolumes/SWAMI%20VIVEKANANDA%20COMPLETE%20WORKS%20%28Vol%204%29.pdf (Last Visited on 1 May, 2023)

something deliverable by themselves as advanced peers. Whether and how far the same should be relevant to the research ought to be ascertained by researchers; albeit, in prior consultation with research advisors concerned in advance.

Rather than getting reduced to shadow of advanced colleague(s) in senior position, advantage of the sovereign research- keeping role of advisor(s) limited to advisory capacity- lies in time of publication since there exists no reasonable claim for its authorship by other(s) in the loop as part of the project. More than intellectual property, intellectual propriety raises dicey issues about research and publication ethics; something sufficient to reduce the reputation of researchers and publications to naught.

**J. Ethics/Integrity**

Since long back, more so after the academia got digitalized two decades back, ethics in course of research and publication discourse surfaces as the single largest contentious concern for the knowledge profession. Plagiarist piracy apart, something engaged by the debate on technology (read technocracy) in subsequent pages, there are metaphysical issues for keepers of conscience in the knowledge practice. The author hereby deliberates upon two major issues commonplace nowadays. First, slow-yet-steady cartelization- albeit arguably and often than not, yet never omnipresent- of research and publication universe by the dominant market players (read corporate publishing houses, Inc., with worldwide coverage) distorts freedom of speech in the dialogic space of the academia; otherwise non-negotiable enough to get liberal democratic governance to fruition. Thus, so-called intellectual lobby- by and large patronized by the Occidental institutional houses- dominates the market of

academic research and publication with aggressive presence (read preponderance) in the South-Asian subcontinent with little opportunity for research on any sundry ideation; opinionated beyond the given trajectory of thought endorsed by the dominant institutional players. Next, apparent predatory praxis rules (read ruins) the market vis-à-vis research and publication; thereby loots the researchers by means of stereotypical regulatory regimes to ascertain the quality of research with goodwill of the publishing houses and endorsement by standardization agencies. Due to the absence of ethics in the research and publication market, individual ethics fall prey by inadvertence to the given systemic booby-traps extended to lure researchers in course of desperate rush for publication as eligibility criteria for either academic research degree or pending promotion in service career; as the case may be.

Institutional void apart, the knowledge practitioners ought to avoid the individual void. Those with average ability and willingness to undertake the rigour of research enterprise ought to avoid research as professional career for generation of either reputation or revenue or both with little/no stake in knowledge profession. Research has had its organic genesis and the same is germinated in the creative souls on its own. On the contrary, those without stake in research remain left with nothing but compromise for survival. Accordingly, they engage search engines, and market engineered products; thereby keep the career prospect afloat throughout their service tenure. While allowing individual entry to the research universe, higher education institutions ought to keep due diligence to prevent entry of the wrong mind in the right universe; thereby minimize the compromise with ethics and integrity.

**K. Punctuality/Regularity**

"Time and tide wait for none"; is a classical wisdom oft-quoted worldwide. The same also happens in cases of research and publication where response to time calls for priority. The researchers are required to keep pace with time. If researchers hurry, they will bury research. If researchers delay, they will deny research. Accordingly, several proverbs are available in the mythology of knowledge profession; 'publish or perish' constitutes one among them while 'publish and perish' does another, among myriad others in place. If unpublished, research remains defunct for public good. If published out of mistake and/or mischief, it has had nonsense and/or nuisance value to culminate into counter-productivity and/or- even worse- culpability on ethics analysis. The prudence, therefore, lies in getting wise vis-à-vis research and publication ethics; those core principles whatever getting institutionalized after the global best practices.[17] With these professional pitfalls around, research and publication ought to rise as regular and punctual affairs with binary opposition: either proceed to progress or pause to perish. A researcher is one running on treadmill by profession. Thus, (s)he is left with no option but to run with movement of the locomotive named society; thereby float on board (read, stay associated) in its given time and space.

In final count, besides punctuality, regularity matters to knowledge profession. The ancient age appears over forever while Valmiki and Vyas could afford to author only one for each: *The Ramayana* and *The Mahabharata,* respectively. Likewise, in the West, Homer authored *the*

[17] Committee on Publication Ethics; often than not abbreviated as COPE. URL: https://publicationethics.org/core-practices (Last Visited on 1 May 2023).

*Iliad* and *the Odyssey*; the latter continued chronicles of the former. Born in the age of Globalization, followed by digitalization, researchers in recent times cannot afford to follow archaic legacy.[18] Also, unlike those in ancient times, researchers in recent times remain remunerated from public exchequer on regular basis. Therefore, public accountability discourse counts such a paid performance as public service with reasoning from political economy. The relevant regime ought to balance between the poles-apart ends, e.g., regularity (read punctuality) on one side and originality on the other. A proposition for original yet regular research publication resembles oxymoron; i.e., originality with regularity, or, regularity with originality, is a great grandeur of the knowledge practice; something sounds great, yet, far from doable in practice.

At the least, no antecedent of seamless coexistence vis-à-vis originality and regularity since time immemorial appears in sight. More regularity yields to less originality and vice versa. A challenge lies in getting them balanced. In cases of inescapable conflict between these variables, priority ought to be originality; over and above regularity.

## L. Contribution

Last yet not least, the teleological end of knowledge practice lies in inquiry or quest for the truth. Albeit, even truth cannot avoid the devoid of polemics since the same

[18] "Don't take rest after your first victory because, if you fail in second, more lips are waiting to say that your first victory was just luck." APJ Abdul Kalam History in English, URL: https://static1.squarespace.com/static/6454d0e3f3bc4754dc7070f4/t/645d0b335f732e4eabb3a597/1683819315796/lijexemukimovemuxap.pdf (Last Visited on 1 May, 2023).

remains subjected to perennial subjectivity with own self.[19] After unproblematized folklore of the knowledge practice, however, research is meant to re-search upon the points of inquiry or quest to minimize untruth; thereby reach truth with robust reasoning behind; something subjected to potential falsifiability to emerge in time ahead. Rather than sacrosanctity, otherwise available in course of faith discourse, falsifiability extends legitimacy to the course of truth discourse since the latter engages its inquiry or quest to ascertain the truth in its given time and space; thereby get the inner-subjectivity rationalized.

More than expression, even little more than ideation, contribution to knowledge constitutes the lone litmus test in research and publication universe. Indeed, ideation and expression are major building blocks of knowledge. A residual space, however, is reserved for others on board. For instance, scientific (read systematic) usage of relevant methods deserves credit of its contribution to knowledge. Likewise, collection and collation of raw database drawn from the field- followed by usage of processing software toward discursive (de)construction of the argumentation- deserves credit toward creative contribution to knowledge.

[19] When the question of truth is raised in an objective manner, reflection is directed objectively to the truth, as an object to which the knower is related. Reflection is not focused upon the relationship, however, but upon the question of whether it is the truth to which the knower is related. If only the object to which he is related is the truth, the subject is accounted to be in the truth. When the question of the truth is raised subjectively, reflection is directed subjectively to the nature of the individual's relationship; if only the mode of his relationship is in the truth, the individual is in the truth even if he should happen to be thus related to what is not true.
David F. Swenson and Walter Lowrie (tr.), Soren Kierkegaard, *Concluding Unscientific Postscript*, PRINCETON UNIVERSITY PRESS 178 (1941).
URL:https://archive.org/details/kierkegaardsconc0000kier/page/178/mode/2up?view=theater&q=when+the+question+of+truth (Last Visited on 1 May, 2023).

In a nutshell, research ought to add value to hitherto available information by means of creative construction as its contribution toward creation of the newer wisdom.

**M. Impact/Influence**

Research output refers to creations of the mind;[20] with reasonable claims to avail intellectual property right in favour of these creators by means of their own merit. The researchers, therefore, ought to check market value (read market prospect) of the research output. So far as the personal research for private purpose is concerned, the same may afford to care for individual intent of those engaged in research for *sui generis* purpose. Karl Marx, for instance, went on getting deported throughout his lifetime from one country to another, thereby suffered from statelessness, *persona non grata* across the Europe, due to his research; something to prove a game-changer for the next century or even beyond after his lifetime. With similar algorithm, institutional research cannot afford to transcend the systemic *Lakshmanrekha*; more so for institutional research toward award of degrees.

Those in pursuit of institutional research, for award of the research degrees in particular, ought to add value to knowledge; thereby leave lasting impact and influence the lifeworld in time ahead. Without impact assessment, research for the sake of research degree leaves no value. One, not only though, trajectory to witness visible impact upon knowledge profession lies in citation of the research output by research on the same afterwards as prior

[20] The official definition of INTELLECTUAL PROPERTY by WIPO. URL https://www.wipo.int/about-ip/en/#:~:text=Intellectual%20property%20(IP)%20refers%20to,and%20images%20used%20in%20commerce (Last Visited on 1 May, 2023)

research. Thus, publishable quality apart, enterprise to get research output available in the public domain appears non-negotiable for its impact assessment. Thus, otherwise quality research with the cutting-edge potential to leave impact may and does fall short with the absence of its presence in public domain. In the digitalized world, more than its presence in print, web presence facilitates to bring in citation; critical for impact assessment count.

With the baker's dozens of precautionary principles vis-à-vis research and publication ethics, as stated above, the author underscores basic commonplace practices and malpractices available in contemporary research universe nowadays; followed by consequent dividends and debacles out of the same respectively. The authorial intent but lies in handholding the rookie researchers- newly engaged in knowledge profession to practise quest for new knowledge- with prior-informed (prudent) policy choice on issues of concern; along with the pedagogy of 'wh'-questions, e.g., what, how, why, to do (something inclusive of not to do) research in time ahead.

**III. Technology/Technocracy**

As mentioned meanwhile, research and publication used to get divided in two parts: (i) substantive and (ii) procedural. In recent times, the third trajectory has joined to rule knowledge practice: technical; something omnipresent under the disguise of so-called publication ethics watchdog. The similarity between prior literature (published earlier elsewhere) and the present literature (proposed for publication in time ahead) is seen by online software- meant for similarity check- to ascertain exact percentage of similarity between two works, the former is published and the latter is proposed to be published;

followed by identification of the specific online source where identical similarity between them is available. Not all sundry occasions of similarity are held culpable; something to be unfolded in minute details subsequently.

A core one among the apparent fault lines in online ethics governance lies here that publication police has hardly had knowhow- either substantive or technical or both- to get similarity and plagiarism dissociated. Also, novice sentinels running technical software for policing publication ethics hardly possess either subject expertise or technical skill or both to get mistake and mischief dissociated. Besides, mistake and mischief ought to get subjected to the doctrine of intelligible differentia. Both deserve different treatment; since the former is innocent while the latter is not. While those who commit mistake (without apparent intent) deserve opportunity to improve, those who commit mischief (with an apparent intent) deserve punitive treatment; followed by penance for sin with the society; something attributable by the study of axiology. Rare exceptions apart, penology in either case- of mistake or mischief alike- remains the same: summary rejection of the submission with no or little reasoning- similarity apart- on the impugned text along with context; something in semblance of the penology of incarceration in response to almost all sundry offensives; irrespective of the diversity in their features without causal relations between incarceration of body and correction of mind for improvement of the person sentenced. Besides, reasoning behind rejection, even if given, often than not falls short to earn satisfaction of a reasonable man with knowledge in the subject. The percentage found in similarity check software is cited as reason behind rejection while the same reflects mere similarity, something value-neutral, and not

plagiarism, something inimical to basic values to the credit of research and publication universe.

Without head and mind of its own, the delegation of policing research and publication ethics by means of the similarity-check software alone ought to prove counter-productive. There are but umpteen occasions of otherwise prolific publicists getting caught with nonsense reasoning; by means of mere mention of first name and/or surname of the publicist as author; something in usage of their previous pieces published earlier. Then, will the author publish research without first name and surname? Such is the height of absurdity; to mention one among myriad misadventures of policing human ethics by means of post-human technology (read technocracy). After such routine similarity check through software, final call on integrity in research and publication ought to be taken by human agency; with usage of due diligence by head and mind taken together. A prototype positivist practice vis-à-vis upper-capping software similarity percentage, therefore, leaves publication ethics prone to short-circuit. However, clandestine malpractices in both sides of research and publication- followed by omnipresent trust-deficit across the board- exhausted the mutual good faith on either side. In the wake of newer normativity, uncodified by default, publication of research is limited to professional network on the basis of mutuality or reciprocity (read exchange) of private interests alone; something to gross detriment of the rationale behind research and publication. Devoid of ethics, they fall short either to wield credibility in the knowledge profession; or to yield the sustainable impact upon readership with stake in the knowledge profession. In final count, the relevance is reduced to gross detriment of those engaged in the endgame; liable to the posterity. Rare exceptions apart, while all engage the game toward

mutual destruction at random, *'who deserves surveillance by whom with what means and methods?'* leaves scope for another trajectory of inquiry or quest to keep paradox of research and publication universe afloat in time ahead.

Another fault-line lies in getting originality theorized. The sentinels of academic integrity ought to attain clarity or maintain transparency in the ontology of originality itself. Is it originality in the ideation? Or, is it originality in the expression? Or, is it both? The sentinels of ethics ought to learn what they look for. Due to want of clarity (read certainty), rule of law suffers default setback out of confusion through jeopardy in the meaning of originality. Thus, in the zeal of policing research and publication ethics, sentinels extend regret to publish submissions with poles-apart reasoning played out without precision: one may and does focus somewhere; originality in ideation while another may and does focus elsewhere; originality in expression. With apparent anarchy in ethics analysis, research and publication are left to the policy paralysis. Back to technical justice, appurtenant to social justice, software for the similarity check in research ascertains originality in the expression. "The poverty of philosophy" (Marxist jingoism),[21] however, lies otherwise. No software is enabled to ascertain originality in the ideation anyway. The post-human intelligence is yet to earn the capability to get ingenuity quotient of human intelligence quantified. In the absence of policing capability on default originality of the ideation, cliché replication of already done ideation with cosmetic changes in the expression by stereotypical paraphrase software is on to gross detriment of integrity;

[21] Karl Marx, *The Poverty of Philosophy: Answers to the Philosophy of Poverty by M. Proudhon* (1847).
URL: https://www.marxists.org/archive/marx/works/download/pdf/Poverty-Philosophy.pdf (Last Visited on 1 May 2023).

something known to one and all alike- yet commonplace- to gross injustice of the research and publication ethics, followed by impunity. No code of conduct could ever stop the leakage: how to avoid the voids in ethics governance.

In course of axiology discourse, no theory preaches to count ethics in percentage; something unprecedented before invention of the impugned plagiarism jurisprudence. To be candid, under the disguise of policing publication, plagiarist propaganda turns integrity quantifiable; as if, integrity has had any threshold limit of its compromise. For instance, compromise till ten percent (10%)- or even fifteen percent (15%)- is clean while compromise beyond, exceeding ten percent (10%)- or even fifteen percent (15%)- is not. Where is the source of wisdom? Where is the basis of reasoning to hold a statutory percentage innocent and the excess offensive? For instance, is 10% compromise with ethics clean while 10.01% compromise not? What is so sacrosanct in the compromise with ethics till 10%? Or, even till 15%? Interestingly enough, zero percent (0%) compromise with ethics is held unreliable worldwide; something doable by myriad means and methods of trick with guilty intent to subvert numeric count of compromise with research and publication ethics in a way or other. To get the given arguendo summarized, the endorsement of compromise till certain percentage and arbitrary fatwa vis-à-vis culpability of compromise beyond the given count of percentage suffers from want of intelligible justification behind; at least, on the count of academic integrity and ethics in education.[22] Thus, in the absence of discursive

[22] University Grants Commission (Promotion of Academic Integrity and Prevention of Plagiarism in Higher Educational Institutions) Regulations, 2018; section 5(b).

endorsement from discursive domain of axiology anyway, penology provided under the Regulations[23] appears devoid of intelligible reasoning; despite legality of Regulations getting fortified on technical (read positivist) count. Thus, inner morality of the law raises issues questioning- if not contesting- the law; as provided by the regulatory regime.

In particular, the impugned jurisprudence vis-à-vis plagiarism provided by the regime deserves public debate. Accordingly, Plagiarism means the taking of someone else's work or idea and passing them as one's own.[24] Here lies disconnect between criminology and penology. If plagiarist practices are antithetical to academic integrity, if plagiarism deserves prevention as per the nomenclature of Regulations, even 1% similarity constitutes plagiarism and deserves response. Indeed, micro/minor percentage in similarity deserves a lesser penalty. But the provision for no penalty in the similarity till 10% attracts attention for the absence of intelligible jurisprudence in plagiarism; otherwise formulated in Regulations. While 0% similarity is held absurd and such absurdity is already well-known worldwide, the epistemology of research and publication governance by means of blind quantification of similarity by certain percentage count resembles glasshouse castle.

Why the pupils practise plagiarism poses another research question; followed by the want of uniformity in public perception upon reasoning behind plagiarism at major geographical regions. In course of a field study,[25] for

URL: https://www.ugc.gov.in/pdfnews/7771545_academic-integrity-Regulation2018.pdf (Last Visited on 1 May 2023).

[23] *Id*, section 12.

[24] *Id*, section 2(l).

[25] Dr. Lucas Introna *et al*, *Cultural Attitudes towards Plagiarism: Developing a Better Understanding of the Needs of Students from Diverse Cultural*

instance, it went apparent that plagiarism in higher education institutions has had poles-apart worldviews around the world. In empiricist research, the trajectories surfaced diversified and different enough from one other; by and large disconnected to culpability:

> "Chinese: In a case where a Chinese student was accused of plagiarising there was an obvious difference in interpretation of the definition of plagiarism. The student did not think it was correct to rewrite an author's words since the author was well known and respected. Hence, he/she included it in his/her text. This reverence for authority clearly comes from a cultural worldview, where respects for betters and elders are paramount.
>
> "Indian: This student understood that plagiarism was not acceptable in the UK. However, the student chose to plagiarise because he/she felt that his/her English was not sufficiently proficient to explain the point clearly enough. He/she felt that the original author's English was better.
>
> "Greek: This student had plagiarised from the Internet. His/her interpretation was that copying from textbook was wrong, but that copying from the Internet was acceptable.
>
> "Spanish: This student was accused of plagiarising although what he/she had written was apparently acceptable in Spanish academic circles.

*Backgrounds Relating to Issues of Plagiarism*, Lancaster University Management School, 2003, p. 8. URL: https://www.academia.edu/1362321/Cultural_attitudes_towards_plagiarism (Last Visited on 1 May, 2023).

> This student was actually a visiting student and he/she was not fully aware of the Universities rules for plagiarism.
>
> "African: When a Mauritian student was accused of plagiarism he was shocked as he had written as he would have done in his home institution. In Mauritian academic culture plagiarism is not considered wrong, but is widely accepted."

Thus, authors flag-off concern upon the penology vis-à-vis plagiarism; along with uniform policy advocacy as panacea in the context of cultural plurality worldwide:

> "It is clear from the interviews and cases that there are significant local and cultural differences with respect to the definition of plagiarism. Although it is easy to define plagiarism it seems that it becomes much more complex to deal with individual instances that may or may not be deemed to be plagiarism. Equally, cultural differences with respect to pedagogical model, assessment practices, writing practices and institutional arrangements may place many writing practices of foreign students, legitimate in its local context, within the realms of what one may deem plagiarism. It seems very important to understand these cultural differences if we are to treat plagiarism in an appropriate and fair manner."[26]

In the given age of anarchy with ethics, the author extends policy advisory not to avoid the rigour of editorial role by easy way out with the percentage count; followed by instant judgment on ethical quotient of the impugned

[26] *Id*, p. 9.

submission. A way-out lies in getting into minute details of the similarity check page-by-page and judge all sundry cases of similarity caught by software on case-to-case basis and not the count in its totality. It may and does deserve much more time from human agency. However, it does lessen dependency syndrome upon intelligence quotient (!) of the post-human agency; something devoid of head and mind of its own.

Even otherwise, so far as the blindfolded percentage count after the cliché of similarity check is concerned, the travesty of academic integrity may and does happen well within 10% count itself. For instance, the conclusion may get copy-pasted in its entirety from elsewhere while the delinquency remains limited to 10% count or below. After the present plagiarism policy, as provided by the regulatory regime, even the copy-pasted conclusion in its entirety cannot be held culpable as the travesty of academic integrity since the quantity of an otherwise apparent aberration did not exceed impugned upper cap of percentage in similarity count. Here lies the absurdity.

This being an 'easementary' essay, besides getting challenges unfolded, there is authorial obligations to get dos and don'ts documented with clarity for those enrolled in research coursework. The first or foremost to flag-off among the don'ts is the proscription for defiance. Indeed, a regulatory regime may and does fall short of perfection; as is the case here. However, poverty of the regime but cannot be construed as passport toward defiance of law since the same ought to indulge in pandemonium where free-for-all circumstance would turn the state of affairs worsened. The author hereby remembers an oft-quoted chronicle, "Why did not Socrates try to escape his death sentence"? Here lies meta-narrative of his final moments:

> "Socrates could have saved himself. He chose to go to trial rather than enter voluntary exile. In his defence speech, he rebutted some but not all elements of the charges and famously declared that "the unexamined life is not worth living." After being convicted, he could have proposed a reasonable penalty short of death but initially refused. He finally rejected an offer of escape as inconsistent with his commitment never to do wrong (escaping would show disrespect for the laws and harm the reputations of his family and friends)."[27]

Likewise, those enrolled in research coursework, even afterwards, researchers- more so while they are engaged in the knowledge profession- ought not to fly from the law since defiance to the ethical standards returns as discredit to none but themselves and works thereby accomplished. With compliance to the law, followed by systemic acknowledgement through award of research degree, researchers may avail the legitimate right to raise *bona fide* questions, or, even contest *de lege lata*, i.e., what the law is; thereby plead for *de lege ferenda*, i.e., what the law should be, afterwards. Until progressive development of the normative position vis-à-vis integrity, therefore, prudence lies in adherence to otherwise erratic standards; compared to legal nihilism. Until normativity does not progress, to ease ethical praxis, the following five generic thumb rules are provided by the 'Grammarly' blog; one

[27] Britannica. URL: https://www.britannica.com/question/Why-didnt-Socrates-try-to-escape-his-death-sentence#:~:text=He%20finally%20rejected%20an%20offer,of%20his%20family%20and%20friends).

American cloud-based typing assistance software:[28] (1) cite source, (2) include quotations, (3) paraphrase, (4) present own idea, (5) use plagiarism checker. Adherence to the safeguards mentioned above ought to reduce risk of getting booked for adherence to evil means and methods by inadvertence. The fourth commandment is substantive in its essence while first three are procedural and the fifth is technical. All five but possess deliverables of their own.

A little more is left to unfold the ontology of ideation as a substantive criterion to accomplish original research. With functional approach, research by and large resembles reproduction in the sense that, if the candidate is capable, (s)he needs no parentage, tutelage, even peer patronage, in due course of capacity-building the skill to practise original research. While procreation is the most fundamental biological act, ideation is the most fundamental intellectual act. Thus, subject to capability, both are best governed by means of instinct; something subjected to inner reflex by default. At its best, what coursework may and does extend is external aid to facilitate novice with handhold by those senior and seasoned to intellectual technology to preach the usage of means and methods of research. A researcher may and does get graduated toward ideation even with little or no external aid; albeit, without prejudice to coursework anyway. The lived accounts of who's who in natural sciences and societal studies prove this premise beyond doubt.

## IV. Let Pathology Pre-empt Penology

Among the policy choice available, prevention and cure, prudence lies in emphasis upon the former; much

[28] GRAMMARLY. URL: https://www.grammarly.com/blog/5-most-effective-methods-for-avoiding-plagiarism/ (Last Visited on 1 May, 2023).

more than the latter. Even medical science places priority on the prevention as a professional thumb-rule; followed by cure of the defiance and delinquency; both aftercare. The knowledge practitioners devoid of professional ethics are devoid of professional standards of academic integrity by default; something similar to professional sickness. The knowledge profession ought to calibrate its ecosystem to prevent them depart from ethics; more than aftercare to bring them back to standards by means of penance or penalty; more so in cases of mistake. In cases of mischief, defaulters but deserve an opportunity or two to correct the *culpa*; thereby re-join knowledge practice with revival of the professional ethics.

In course of prevention from fault and/or culpa, pathology plays a critical qualifier to refrain practitioners from departure or deviation from ethics. By means of its etymology, pathology is meant to study abnormality, followed by the breakdown of righteous conduct generated by the same in personality. Thus, pathologic surveillance is divided in two. First, routine check to ascertain whether there is any case. In cases of abnormality getting detected, minute check is required to ascertain how far they rise from the righteous conduct, besides getting the character of abnormality diagnosed; i.e., whether out of mistake or mischief. The author extends policy advocacy to engage pathology; thereby minimize the number count of clear and unambiguous culpability in rarest of the rare cases of infernal mischief alone; where one deserves deterrence. Let penology proceed as last and final call to take on the culpability- if at all- with due diligence, care and caution. In cases of mischief, rare exceptions apart, culpability in defiance of integrity deserves therapeutic treatment for a humane correction of course in conflict with ethics and get errant practitioners repatriated to knowledge profession;

lest such an otherwise wise profession may get circumscribed by the fence of ethics; thereby reserved only for those with infallible integrity quotient. Say, "*Let there be light*;"[29] even for those fallen. Let them transcend sinful past with penance and return to profession; thereby turn the same to inclusive space for knowledge practice. Similar wisdom toward salvation of the unwise soul by means of inquiry or quest for truth (read research for newer knowledge) appears available elsewhere otherwise; albeit, customized to expression and ideation after the given time and space. Unlike the mundane material research in modern times, spiritual research in ancient times engaged its inquiry or quest for superior truth. Abstract truth apart, all major trajectories of the transition from phenomenon to noumenon found the building blocks of research in the South-Asian inquiry or quest in ancient times. To quote wisdom of ancient text:

> "*(Om) Asato Maa Sad-Gamaya*
> *Tamaso Maa Jyotir-Gamaya*
> *Mrityor-Maa Amrtam Gamaya.*
>
> [*(Om) From evil lead me to good.*
> *From darkness lead me to light.*
> *From death lead me to immortality*."][30]

[29] THE BOOK OF GENESIS; Chapter 1. URL: https://www.vatican.va/archive/bible/genesis/documents/bible_genesis_en.html (Last Visited on 1 May, 2023).

[30] For details, read: Swami Madhavananda (tr.), *The Brhadaranyaka Upanisad: with the Commentary of Sankaracarya*, Verse no. I.3.28, 86, 3rd ed., Advaita Ashrama, Almora, (1950). URL: https://ia800302.us.archive.org/2/items/Brihadaranyaka.Upanishad.Shankara.Bhashya.by.Swami.Madhavananda/Brihadaranyaka.Upanishad.Shankara.Bhashya.by.Swami.Madhavananda.pdf (Last Visited on 1 May, 2023).

While responsible knowledge practitioners possess onus vis-à-vis ethics, knowledge profession ought to set ethical legacy of systemic morality and the same lies in patronage (read parentage) of practitioners, to help those in conflict with code of conduct comply with normality with tolerance; not to harm them for maiden professional misconduct with citation of penology. Like the priesthood of justice, that of knowledge is a coveted profession and not too many practitioners may possess all professional standards by default; after public proposition. Also, like truth, ethics is ridden with subjectivity of its given time and space. Prudence, therefore, lies in systemic patience while disciplining the defaulters; followed by the passion to progress them with corrective courses, not to punish them with coercive courses; thereby get the profession enlightened from within the system. Even if caught red-handed for gross compromise with integrity, more than punitive courses, first-timer offenders deserve subjection to penance. Last yet not least, values cannot be taught by introduction of course like 'research and Publication ethics' during the coursework until basic values remain rooted to conscience of those in coursework as default praxis by means of schooling the same since childhood; while character was built. In the absence of schooling civilizational values to toddlers, the gospel of research and publication ethics to adult individuals ought to fall in deaf ears, similar to the way otherwise great grandeurs of professional ethics do while the discourse of ethics is offered in Law Schools as a ritual; either in ultimate- or in penultimate- course of professional legal education.

The nomenclature getting primarily centred around research and publication ethics, this essay is also meant to ease out technicality- involved in course of the quest for truth discourse- and with reasoning behind the same. The

axiology is governed by presupposition of knowledge. The ignorance, therefore, is a defence against the defeat of praxis vis-à-vis ethics. This essay, therefore, is meant to bring in the knowledge of ignorance to researchers; lest the ignorance of ignorance may be pleaded by practitioners as a valid defence to their discredit. There lies the connect between the technical knowhow of intellectual technology (research methodology) and the discursive praxis of axiology (academic integrity).

## Chapter - 4

# STATISTICAL APPROACHES TO EMPIRICAL LEGAL RESEARCH

*Krishan Kumar Pandey*[*]

## 1. Introduction

The majority of events in daily life are not predetermined. For instance, when a coin is tossed, it could land on either heads or tails, roll away, or stand on edge. The movements of molecules, when we mix hot milk & cold water, are random. In the manufacturing process of bolts by a company, they may be defective or non-defective, etc. These types of problems can be answered only with the help of statistics because statistics is the science of uncertainty. It generally deals with questions of what could be, what might be, or what probably is. To understand the implication of numerical facts relating to the economy, society, science, law and technology statistical thinking is necessary for every citizen.

All disciplines of social sciences, pure and applied sciences uses statistical methods for analysis and research works. In fact, statistics has become the basis to verify theories and laws in every discipline. In reality, statistical tools are used for searching new knowledge in all disciplines. The methods by which statistical data are analyzed are called statistical

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methods, although the term is sometimes used more loosely to cover the subject 'statistics' as a whole.

Empirical legal research encompasses the application of quantitative methods to study legal phenomena and make evidence-based conclusions. Statistical approaches play a pivotal role in analyzing data, testing hypotheses, and drawing meaningful inferences in this field. This chapter explores the various statistical techniques used in empirical legal research, highlighting their applications and considerations.

## 1.1 Basic steps of the research process

As it establishes standards for human behavior, law can be seen as a normative science. It frequently acts as a catalyst for bringing about socioeconomic transformation. Legal academics are responsible for thorough research of law as a normative science in general. Legal research is required to conduct a pre-legislative social audit of law since it enables one to comprehend and appreciate the social dynamics that were important in shaping a particular law into the final version. It also helps in identifying the gaps between the legal ideal and the social reality and associated enablers.
Statistics is an indispensable tool in this journey of legal research work. It helps in exploring and developing the contextual format of the research findings coming from various disciplines of knowledge.

Statistics and Research, both are made for each other. Without statistics research is blind. Statistics provides a systematic way for the progression of research in the right direction. The research process may be classified as follows;

**Research problem formulation:** The research problem formulation is the first step of this scientific journey. Basically,

the problem formulation is connected with the contextualization of the research topic in light of the research interest area. It helps in listing out the core concepts, overarching questions, and the associated variables of the study.

**Extensive literature survey:** Through rigorous literature review, one can ensure the originality & clarity of research and also can avoid reinventing the wheel again. It helps to identify the actual research gap and research questions for further study. An extensive literature review leads to identifying the critical research gaps. It should be done in chronological order for developing a better understanding and clarity for the proposed research area.

**Developing the research objectives**: The research problem could have many different aspects, yet one might not have enough time or resources to investigate them all. Therefore, in order to actually define the scope of the research project, one should outline the objectives in bullet points.

Research objectives are confined to do list for the statement of proposal. It covers a lined up action details for planned research work. In general, it is intended to familiarize oneself with fresh perspectives on a phenomenon, to appropriately depict the traits of a certain person or group, a circumstance, or to examine the frequency with which something occurs.

**Preparing the research design:** The research design is a blueprint for any research. Research design defines and decides the dimensions of proposed research work. The ultimate objective of research design is to minimize the chance of different types of bias which may further leads to drawing the right set of inferences from the data.

**Determining sample design:** Inappropriate selection of sampling design may generate sampling error, which can drag the concentration of whole research work. Identifying appropriate sampling design is a very important step of research process. Through identifying an appropriate sampling design one can minimize the possible sampling error as well as the chances of biasness.

**Collecting data:** Relevant data are required for execution of a successful research work. One can use primary, secondary, or both types of data. Knowing the likely and reliable sources of secondary data relevant to the inquiry is important.

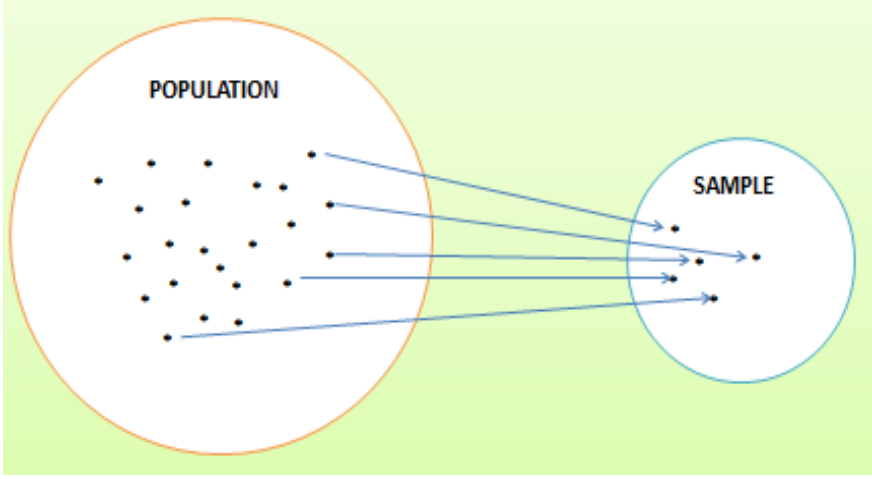
**Data Analysis & Hypothesis testing:** Data analysis can broadly be classified two parts. Initially, we can prepare the data and go for visual descriptive analysis. Further one can test different types of hypotheses which has been formulated earlier in the light of research objectives and research questions of the proposed research.

**Generalizations and interpretation:** A research is said to be a good research if, its results of the corresponding research can be generalized for similar situations. Broad meaning of statistical inferences can be taken out, which can play a very significant role for further research and developments in similar area of interest.

**Preparing and writing the Report:** Finally report writing constitutes the central aspects of any doctoral research. It acts as an instrument for disseminating the research findings and also as a medium of presenting the essence of research to the users.

## 1.2 Populations and Samples

The term population is defined as a total collection of items or elements of which one is interested to know some characteristics. A population does not necessarily refer to human beings. It may be the number of people who smoke, the number of people using CFL bulbs & tubes, the number of car owners, etc. On other hand sample refers to a small part of population. It is a small group of units scientifically selected that represent the population.

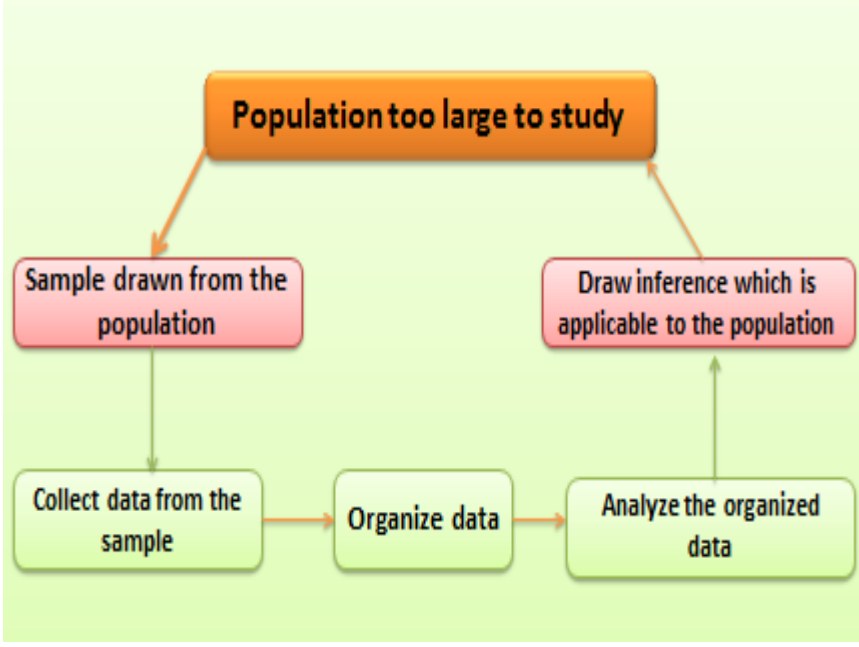



**Population and Sample**

## 1.3 Census and Sampling Method

When we include each unit of universe or population for study, it is termed as census method. It is also known as 'complete count or enumeration' method. For example, to find the average performance of students in college, if marks of all students in the college are collected, then it will be census method.

In the sample method some units or items are selected from the population and based on the characteristics of sample, the characteristics of the population are identified. In other words, sampling is the method of knowing about the population on the basis of a sample taken from the population. There are mainly two reasons for resorting to sampling method instead of conducting a census, namely, time and money. The sampling method can save lot of money and time.




**Connect between sample and Population**

## 1.4 Parameter and Statistic

A parameter tells us the characteristics of the population. The mean and standard deviation of population are denoted by μ and σ. A statistic tells us the characteristics of the sample. The mean and standard deviation of sample are denoted by $\overline{X}$ and $S$. In fact, in statistical inference, we try to

find out the features of population on the basis of sample statistic.

| Variable | Population | Sample |
|---|---|---|
| *Mean* | $\mu$ | $\bar{x}$ |
| *Proportion* | $\Pi$ | $p$ |
| *Variance* | $\sigma^2$ | $S^2$ |
| *Standard Deviation* | $\Sigma$ | $S$ |
| *Size* | $N$ | $n$ |
| *Standard error of the mean* | $\sigma_x$ | $S_x$ |
| *Standard error of the Proportion* | $\sigma_p$ | $S_p$ |
| *Standardized Variate (z)* | $(x-\mu)/\sigma$ | $(x-\bar{x})/\sigma$ |
| *Coefficient of Variation (CV)* | $\sigma/\mu$ | $S/\bar{x}$ |

**Table 1.1**

## 1.5 Independent and dependent variables

The independent variable, is the variable which is used to predict the variable of interest. The second name of independent variable is "explanatory variable". On other hand the dependent variable is the variable that we are willing to predict. It is also known "explained variable". It should be understood that the terms "dependent" and "independent" refer to dependence in its mathematical or functional sense. They do not necessarily imply that there is a cause-and-effect connection between the variables.

## 1.6 Nominal scale variables

A nominal scale is a simple system that assigns numerical symbols to events to represent them. This is the lowest measurement level that has any impact. It does not imply an order or distance relationship, nor does it have an arithmetic origin. The only point to remember is to not to assign the same numeral to different classes. These numbers have no true meaning and thus cannot be added, multiplied or divided. They are simply labels or identification number. The following are examples of nominal scales:

Gender

(1) Men (2) Women

Nationality

(1) Indian (2) American (3) Others

What kind of analysis can be done on this type of data? We can only find the numbers and percentages of items in each group. The only appropriate statistical tool which can be applied to such data is mode.

## 1.7 Ordinal Scale Variables

Ordinal scale is one step further in levels of measurement. Ordinal scales not only classify data into categories but also order them. One point to note here is that ordinal measurement requires transitivity assumption which is described as: if A is preferred to B, and B is preferred to C, then A is preferred to C. The example of an ordinal scale is as follows:

Please rank the following cars by look from 1 to 5 with 1 being most stylish and 5 the least stylish.

| | | | | | |
|---|---|---|---|---|---|
| Maruti Swift | ( | ) | Honda City | ( | ) |
| Optra | ( | ) | Tata Indigo | ( | ) |
| Hyundai Verna | ( | ) | | | |

Numbers in an ordinal scale only stand for rank order. They do not represent absolute quantities and the interval between two numbers need not be equal. In the case of ordinal scaled data, mathematical operations such as addition and division can't be permitted. Mode and median can be found but arithmetic mean must not be computed.

### 1.8 Interval and Ratio Scale Variables

Interval scales take measurement one step further. It has all the characteristics of ordinal scales in addition to equal interval between the points on the scale. On interval scales common mathematical operations are permitted. One can find arithmetic mean, variance and other statistics. Ratio scales have a meaningful origin or absolute zero in addition to all the features of interval scale. Since the origin or location of zero point is universally acceptable, we can compare magnitudes of ratio-scaled variables. Examples of ratio scales are income, weights, etc. All types of statistical and mathematical computations are permitted on ratio-scaled variables.

| **Scale** | **Permissible Operations** | | | | **Examples** |
|---|---|---|---|---|---|
| | Classifying | Placing in Order | Determining Differences | Determining Ratios | |
| Nominal | ---- | ---- | ---- | X | Age, height, weight |
| Ordinal | ---- | ---- | X | X | Calendar time |

| | | | | | |
|---|---|---|---|---|---|
| Interval | ---- | X | X | X | Preference, ranks |
| Ratio | X | X | X | X | Sex, ethnic group, political affiliation |

**Table 1.2 Scales and permissible operations**

## 2. Measures of Central Tendency

### 2.1 Mean

The arithmetic mean is what most laymen call an '***average***'. The mean is computed by adding all the observations in a data set and dividing the resulting sum by the total number of observations. The mathematical formula for computing mean is:

$$\bar{X} = \frac{\sum_{i=1}^{n} X_i}{n}$$

... (2.1)

Where $n$ is the sample size and $\bar{X}$ represents the mean. The population mean is represented by the mui ($\mu$). In most cases, the mean is a representative number, but it can be misleading when extreme values are present in the data set. The sample mean is unbiased and consistent, so it is a good estimate of the population mean.

**Example 1:** Calculate the simple mean for the following data.

| **S. No.** | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Marks** | 17 | 17 | 14 | 16 | 15 | 24 | 12 | 20 | 17 | 17 | 13 | 21 |

**Solution:** Total sum of these all values: $\sum_{i=1}^{n} X_i$ = 17 +17+14+. . . + 19 +27+ 19 = 398

| **S. No.** | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Marks** | 15 | 14 | 14 | 20 | 21 | 9 | 15 | 22 | 19 | 27 | 19 |

The arithmetic mean:

$$\bar{X} = \frac{\sum_{i=1}^{n} X_i}{n} = \frac{\sum_{i=1}^{23} 398}{23} = 17.304$$

Thus, the mean for the above data is 17.304.

## 2.2 Median

The median is the middle most value which divides the data series into two equal parts**.** For finding the median first the data is arranged from the lowest to the highest values. In other words, the median is the value that divides the entire data set in such a way that at least half of the observations are less than or equal to it and at least half of the observations are greater than or equal to it.

**Example 2:** Calculate the median for the following observations: 21, 14, 26, 29, 17, 15, 32.

**Solution:** First we write the observations in ascending order, 14, 15, 17, 21, 26, 29, 32. The sample size (n) = 7, Median is the size of (7+1)/2 i.e. 4th observation. Hence, median (Md) = 20.

### 2.3 Mode

The Mode of a set of observations is the most frequently occurring value in that data set. It is relevant in cases of multiple occurrences of observation values.

**Example 3**: A retailer of television obtained a sample of fifty television from a week's output. The televisions were thoroughly checked and the number of defects was recorded as follows:

| Number of Defects | 0 | 1 | 2 | 3 |
|---|---|---|---|---|
| Number of television | 12 | 15 | 17 | 6 |

Find the model number of defects for this sample.

**Sol.**: Since two defects occur more than any other number, the mode of this sample is 2.

## 3. Measures of Dispersion

### 3.1 Variance & Standard Deviation

Standard deviation shows the dispersion or variability across data points. Other measures of variation are range, inter-quartile range and mean deviation but standard deviation is considered to be the most efficient measure of dispersion. If all the data points present in a sample are near to each other, then standard deviation incline to be small. In other way if data points are dispersed then the standard

deviation will tend to be large. It is denoted by $\sigma$ (sigma). The mathematical formula for computing standard deviation is:

$$\sigma = \sqrt{\frac{\sum_{i=1}^{N}\left(X_i - \bar{X}\right)^2}{N-1}}$$

…. (3.1)

When standard deviations of two distributions are compared, the distribution with smaller standard deviation shows less variability. For example let's assume that there are two projects "X" and "Y", the average return and time horizon of the two projects are the same. However, project "X" has a standard deviation of 2.8 and project B has a standard deviation of 3.6. Which project will you prefer? No doubt a rational investor will choose project A because it is less risky.

**Example 4:** Compute standard deviation for the following data:

52 65 88 72 81 112 66 105 90 102 58

**Solution:**

| **x** | 52 | 65 | 88 | 72 | 81 | 112 | 66 | 105 | 90 | 102 | 58 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| $X - \bar{X}$ | -29 | -16 | 7 | -9 | 0 | 31 | -15 | 24 | 9 | 21 | -23 |
| $(X - \bar{X})^2$ | 841 | 256 | 49 | 81 | 0 | 961 | 225 | 576 | 81 | 441 | 529 |

$S.D = \sqrt{\frac{\sum_{i=1}^{n}\left(X_i - \bar{X}\right)^2}{n-1}} = \sqrt{\frac{4040}{10}} = 0.78$. Thus, the standard deviation is 0.78.

### 3.2 Mean Absolute deviation

Let $x_1$, $x_2$,……, $x_N$ denote the N members of a population whose mean is $\mu$. Their mean absolute deviation is the average of the absolute discrepancies from their mean; i.e.

$$Mean\ Absolute\ Deviation = \frac{\sum_{i=1}^{N} |X_i - \mu|}{N}$$

… (3.2)

### 3.3 Range

Range is a crude major of dispersion. It depends only on the highest and the lowest values in a given data set. The formula for range is given as follows;

$$Range = R_{\max} - R_{\min}$$

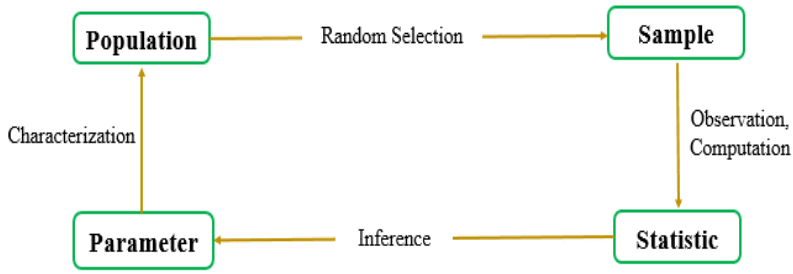
… (3.3)

### 3.4 Inter Quartile Range

Suppose that N observations are arranged in ascending order. Then, the first quartile is the $[\{N+1\}/4]^{th}$ observation and the third quartile is the $[3\{N+1\}/4]^{th}$ observation. The second quartile, also known as median, is the $[\{N+1\}/2]^{th}$ observation. The difference between the third and first quartiles provides a measure of dispersion called the interquartile range. i.e. Interquartile Range = $[3\{N+1\}/4]^{th}$ observation - $[\{N+1\}/4]^{th}$ observation.

## 4. Estimation

The basic idea of statistical analysis is to explore the population characteristics with the help of sample data that is drawn from the population. For example, a bank manager may wish to know the average waiting time for a customer at a particular ATM machine; some NGO (Non-Governmental Organization) may wish to know the average time spent by teenagers on internet. One can, no doubt, estimate average time spent by teenagers on internet by considering all the teenagers in India but such estimate based on census in which each item of the population is included is costly and time consuming. Therefore, instead of going for census, one can take a representative sample and draw inferences about the population. In other words, suppose we conducted a survey of 60 teenagers and ask about the average time spent by them on internet. From this, we will generalize that teenagers are spending so much time on internet.




**Inferential process**

### 4.1 Estimator and Estimate

In inferential statistics, sample statistic is used to estimate the population parameter value. This process is termed as statistical estimation. The statistic, which is used to estimate population parameter value is defined as

"estimator", and the value computed by this "estimator" is known as "estimate".

### 4.1.1 Qualities of a Good Estimator

An estimator is termed to be good estimator when its value is near to population parameter. The following are four desirable qualities of a good estimator.

a) **Unbiasedness:** When the average of all possible sample statistics values is equal to the corresponding population parameter value then the estimator is said to be unbiased. For example, for a given population the mean of the possible sample mean will always be equal to its population mean. Hence, we can say that the sample mean is an unbiased estimator for population mean i.e. $E(\overline{X}) = \mu$.

b) **Consistency:** A parameter is said to be consistent when the size of the sample increases then the probability of conversing sample statistic to population parameter also increases. In fact, as the size of sample increases, the difference between statistic and parameter diminishes then it is considered as consistent.

c) **Efficiency:** An estimator is said to be efficient when its variance is minimum. In this case, the estimator will be closer to the parameter value. The concept of efficiency is taken in its relative sense. All the estimators can be efficient but some estimators are more efficient than others. Efficiency of the estimators is determined by its variance. An estimator having lowest variance is considered to be efficient estimator.

**d) Sufficiency:** An estimator is said to be sufficient if it utilizes all the information contained in the sample. For example, sample means is said to sufficient estimator of population because it utilizes all the information in the calculation of mean i.e., uses all the observation for the computation of mean. However, range cannot be considered as sufficient estimator of variance as it takes only the highest and lowest values for its computation.

## 4.2 Types of Estimation

There are broadly two types of estimation, namely,

**a) Point Estimate**

When we estimate population parameter by a single value it is known as point estimate. For example, a company is intended in exploring what will be the average sale during Holi this year. Based on past data, the R&D department of that company arrives at the conclusion that the average sale will be of Rs. 550 crores. This is an example of point estimate.

**b) Interval Estimate**

The idea of interval estimate arises from the fact that instead of saying that the average sale will be Rs. 550 crores, if R&D department of the company says that the average sales will be between 500 and 600 crores then it is called **interval estimate**. Next, with what **confidence** you are saying that the average sales will be between 500 and 600. Can you say that I am 90 percent confident that the average sale of the company will be between 500 and 600? Symbolically, $P(500 \leq \mu \leq 600) = 0.90$

Thus, the probability of lying true population mean between 500 and 600 crores is 90 percent. In other words, I am 90 percent confident that the true population mean will lie between 500 and 600 crores. Since we are attaching confidence to the interval estimate, it is called confidence interval. 500 crores is the lower limit and 600 crores is the upper limit of the confidence interval.

### 4.3 Confidence Interval for Population Mean (Large Sample)

In the sampling and sampling distribution chapter, we discussed that when a sample is taken from a normal population, the sampling distribution of sample is also normally distributed and can be transformed into standard normal variate given as follows:

$$Z = \frac{\bar{X} - \mu}{\frac{\sigma}{\sqrt{n}}} \qquad \ldots (4.1)$$

From the above formula, confidence interval for population mean can be easily found by rearranging it. The Z values for 90%, 95% and 99% are 1.65, 1.96 and 2.58 respectively. Confidence interval for population mean (μ) is given as follows:

$\bar{X} \pm Z * \frac{\sigma}{\sqrt{n}}$ , The confidence interval at 90%, 95% and 99% are given as follows:

$$\bar{X} \pm 1.65 * \frac{\sigma}{\sqrt{n}}; \bar{X} \pm 1.96 * \frac{\sigma}{\sqrt{n}}; \bar{X} \pm 2.58 * \frac{\sigma}{\sqrt{n}}$$

While $\bar{X} - 1.65 * \frac{\sigma}{\sqrt{n}}$ is lower limit and $\bar{X} + 1.65 * \frac{\sigma}{\sqrt{n}}$ upper limit of the confidence interval at 90 percent level.

### 4.4 Null and Alternative hypothesis

Hypothesis is an evidence-based assumption about the unknown population parameter value. There are two different types of hypotheses, the first one is simple hypothesis and the second is composite hypothesis. If a hypothesis specifies the population completely then it is called a simple hypothesis otherwise it is known as composite hypothesis.

a) **Null hypothesis:** The statistical hypothesis which assumes that there is no significant difference between the sample statistics and the corresponding population parameter is called a null hypothesis and it is denoted by $H_0$.

**Example:** $H_0 : \mu = \mu_0$

b) **Alternative hypothesis:** A hypothesis which is different from the null hypothesis is known as an alternation hypothesis and is symbolized by $H_1$ or $H_A$. It is also known as research hypothesis.

**Example:** $H_1 : \mu \neq \mu_0; H_1 : \mu > \mu_0; H_1 : \mu < \mu_0$

### 4.5 One and Two Tail Tests

When we would like to test that the population parameter value is either smaller or bigger than the specified value in the null hypothesis then this type of test is known as one tail test. It may be either a right tailed test or a left tailed test. For example, for testing the population mean;

$$H_0 : \mu = \mu_0$$

Vs

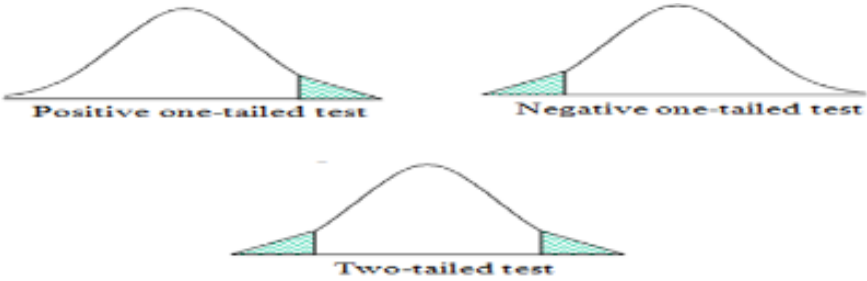
$$H_1 : \mu > \mu_0 \ (Right\ Tailed); or\ H_1 : \mu < \mu_0 \ (Left\ Tailed)$$

The critical region (also known as the rejection region) for a right-tailed test is fully located in the right tail of the sampling distribution of the sample mean, whereas the critical region for a left-tailed test is wholly located in the left tail of the distribution.

On other hand a two tail test is a test of statistical hypothesis where the alternative hypothesis lies in both side of the given critical region. Example,

$$H_0 : \mu = \mu_0$$

Vs $H_1 : \mu \neq \mu_0 \ (\mu > \mu_0 \ and \ \mu < \mu_0 \ )$




**One and Two tail Test**

### 4.6 Type first and type second error

While working on any hypothesis there are possibilities of committing the following two types of errors:

**Type First Error**: Rejecting a null hypothesis ($H_0$) when it is true.

**Type Second Error**: Do not rejecting the null hypothesis ($H_0$) when it is wrong.

The same can be reflected in the following tabular form;

| | **Reject** | **Do not reject** |
|---|---|---|
| **$H_0$ True/ $H_1$ False** | **Type first error** | **No Error** |
| **$H_0$ False / $H_1$ True** | **No Error** | **Type second error** |

Further

$$P[Reject\ H_0\ when\ it\ is\ true] = \alpha$$

*and* $$P[Not\ Rejecting\ H_0\ when\ it\ is\ wrong] = \beta$$

α is also known as Level of Significance (LOS). It plays a critical role either in rejecting or do not rejecting a null hypothesis. This is similar to a good product being rejected by the consumer and hence type first error is also known as producer's risk. Generally, while testing a hypothesis, value of α is chosen at the 1, 5 or 10 percent levels.

On the other hand type second error is similar to not rejecting a product of inferior quality, and it is known as consumer's risk. 1- β, is known as power of test. Power of

test will tend towards unity as β will tends towards 0. So in order to maximize the power of test, one should try to minimize the probability of commenting second type error i.e. β.

### 4.7 The Procedure of Hypothesis Testing

The procedure of hypothesis testing is as follows:

1. Frame the null and alternate hypotheses as:
   $H_0 : \mu = \mu_0$
   $H_1 : \mu \neq \mu_0$ or $H_1 : \mu < \mu_0$ or $H_1 : \mu > \mu_0$
2. Choose an appropriate significance level i.e. $\alpha$. In general, either given in the problem or it is fixed by the decision maker. Generally, in social sciences it is taken 10 %, 5% or 1% level of significance.
3. Choose an appropriate test statistic such as Z – Test, t –Test or any other test statistic.
4. Calculate the value of the Z test, t-test or any other test statistic value.
5. Compare this calculated value with the corresponding tabulated value at given level of significance and degrees of freedom.
6. Take the decision. Reject the null hypothesis if the calculated value of test statistics is greater than the critical/ tabulated value, otherwise do not reject it.

## 5. Hypothesis Testing of a Population Mean: Large Sample

For large sample tests (sample size >30), it is supposed in advance that the random sampling distribution of a statistic is approximately normal. Sample statistic is tending towards population parameter values therefore it can be used to calculate the standard error of the sampling distribution.

In this type of situation, it is suggested to use normal test which is built upon the normal probability curve.

If a random variable X is distributed as normal with mean μ and variance $\sigma^2$ then test statistics z is given by

$$Z = \frac{Sample\ Mean - Population\ Mean}{Standard\ \ Error\ of\ mean} = \frac{\bar{X} - \mu}{\frac{\sigma}{\sqrt{n}}}$$

.... (5.1)

Thus, from the normal probability table, we have

$$P(-3 \le Z \le 3) = 0.9973, i.e., P(|Z| \le 3) = 0.9973$$

$$\Rightarrow \quad P(|Z| > 3) = 1 - P(|Z| \le 3) = 0.0027$$

i.e., in total probability we should expect a standard normal variate to lie between ±3. Various significant values of Z at 1%, 5% and 10% level of significance for one and two tail tests are tabulated below in the Table No 1.3 below;

**Table 1.3**

| Critical Values ($Z_\alpha$) | Level of Significance (α) | | |
|---|---|---|---|
| | 1% | 5% | 10% |
| Two - tailed test | $\|Z_\alpha\| = 2.58$ | $\|Z_\alpha\| = 1.96$ | $\|Z_\alpha\| = 1.645$ |
| Right- tailed test | $Z_\alpha = 2.33$ | $Z_\alpha = 1.645$ | $Z_\alpha = 1.28$ |
| Left - tailed test | $Z_\alpha = -2.33$ | $Z_\alpha = -1.645$ | $Z_\alpha = -1.28$ |

Steps for using normal test:

i) Compute the test statistics Z under $H_0$.

ii) If $|Z| > 3$, $H_0$ is always rejected.

iii) If $|Z| \leq 3$, we test its significance at certain level of significance, usually at 5% and sometimes at 1% level of significance. Thus, for a two tailed test if $|Z| > 1.96$, $H_0$ is rejected at 5% level of significance.

**Example 5:** Two year ago the average life of client at a life Insurance Company, was 32.5 years with SD of 5.5 years. Over the last two years of time the cliental base has been altered. Now the average life of a sample of 50 current clients of company is 34.4 years. Check whether the average life has been changed over the last two years of time.

**Solution:**

$H_0$: μ = 32.5 (i.e., the average life has not changed)
$H_1$: μ ≠32.5 (the average life has changed)

$$Z = \frac{\bar{x} - \mu}{\sigma / \sqrt{n}} = \frac{34.4 - 32.5}{5.5 / \sqrt{50}} = 2.31$$

; Z tab, 5% =1.96;

Since Z cal > Z tab, 5%, the null hypothesis is rejected and it is concluded that the current average life exceeds 32.5 years.

## 5.1 Hypothesis Testing of a Population Mean: Small Sample

When we are dealing with a small sample i.e. sample size (n) is less than 30 and sample is drawn from normal population whose population variance in not known then we use t test. It is used when sigma (σ) is not known. The t-test formula is given as follows:

$$t = \frac{\bar{X} - \mu}{\frac{s}{\sqrt{n}}}; \quad where \quad s = \sqrt{\frac{\sum (X - \bar{X})^2}{n-1}}$$

... (6.1)

Statistical tests need the analyst to specify degrees of freedom. It refers to the number of items in a statistical problem that are free to vary. In univariate analysis, the t-test with (n-1) degrees of freedom is the correct test for statistical inferences.

**Conditions of t- test:**

1. The sample size is 30 or less.
2. The variance of the population is unknown
3. The samples are drawn randomly & independently from a normal population.

**Example 6**: According to a paediatrician, youngsters typically begin walking about 12.5 months old. In order to check this claim, Sangeeta has taken a random sample of 18 kids. The average age at which these kids began walking was 12.9 months, with a standard deviation of 0.80 month. Can you conclude from the data that the average age at which all kids start walking is different from 12.5 months? Use 1% LOS.

**Solution:**

$H_0$: μ = 12.5 vs $H_1$: μ ≠ 12.5

$$t = \frac{\bar{X} - \mu}{\frac{s}{\sqrt{n}}}; \quad = \frac{12.9 - 12.5}{\frac{0.8}{\sqrt{18}}} = \frac{0.4}{0.18856} = 2.1213$$

At 1% LOS and (n-1) degrees of freedom i.e., 18-1=17, tabulated t value is 2.898. Since calculated t statistics is less than tabulated t value so we do not reject the hypothesis, and conclude that on the basis of given information it is difficult to reject the claim of paediatrician. In other words, we can say that given information is not statistically significant so that we cannot reject the null hypothesis.

## 5.2 Hypothesis Test of a Proportion (One Sample)

Sometimes, we are concerned market share, customer makeup etc. which are expressed in percentages. For example, one may be interested in testing what proportions of population prefer voting versus those who are not voting. These are cases of attributes, where only the percentage or absence of a particular characteristic can be found out.
Presence of an attribute is usually taken as 'success' and absence of an attribute is taken as 'failure'. The probability of success is denoted by 'p' and the probability is denoted by 'q'. Z statistic for this situation ( one sample) is given below;

$$z = \frac{\hat{p} - p}{\sqrt{\frac{p(1-p)}{n}}} \quad \text{where } \hat{p} \text{ \& } p \text{ are the observed and Expected proportion of success respectively.}$$

**Example 7:** A recent survey of 300 people in Japan suggests that 24% people are using credit card of some bank. The Bank of Japan management wants to find out whether the true percentage of credit card holders is less than 20 before targeting the customer with new package. Test the hypothesis at 5% significance level.

**Solution:** This is clearly a one-tailed test. The null and alternate hypothesizes are given below;

Null hypothesis $H_0$:μ ≥ 0.20
Alternate hypothesis $H_1$: μ < 0.20

$$Z = \frac{\hat{p} - p}{\sqrt{\frac{p(1-p)}{n}}} = \frac{0.24 - 0.20}{\sqrt{\frac{0.20(1-0.20)}{300}}} = 1.73$$

Tabulated value of one tail Z at 5% level of significance is around 1.65, which is lower than the computed value of Z statistic i.e. 1.73. Hence, we reject the null hypothesis, and conclude that the bank can infer with 95 % confidence that the less than 20% people are using credit card and can target people for credit card with new package.

### 5.3 Hypothesis Test of Population Mean: Two Independent Samples ($\sigma_1^2 = \sigma_2^2$)

**A)** When two independent random samples of size $n_1$ and $n_2$ with means $\bar{x}_1$ and $\bar{x}_2$ & standard deviation $s_1$ and $s_2$ are given and we are interested in testing the hypothesis that the samples come from the same normal population, we can use the following test statistic;

$$t = \frac{(\bar{x}_1 - \bar{x}_2) - (\mu_1 - \mu_2)}{\sqrt{S^2\left(\frac{1}{n_1} + \frac{1}{n_2}\right)}}$$

… (8.1)

Where; $\bar{x}_1 - \bar{x}_2$ = Difference in two samples mean; $\mu_1 - \mu_2$ = Difference in two population mean

$S^2$ = pooled Variance; $n_1$ = first sample size ; $n_2$ = second sample size

$$\text{And } S^2 = \frac{(n_1 - 1)s_1^2 + (n_2 - 1)s_2^2}{n_1 + n_2 - 2} \quad \ldots (8.2)$$

**Example 9:** Sample of two types of items were tested for length of life and the following data were obtained:

| | First type item | Second type item |
|---|---|---|
| Sample size | 8 | 7 |
| Mean | 1234 hours | 1036 hours |
| SD | 36 hours | 40 hours |

Is the difference in the means sufficient to warrant that type first is superior to type second regarding length of life?

**Solution:** Null hypothesis $H_0 : \mu_1 - \mu_2$ i.e. the two types of items are identical.

Alternate hypothesis $H_1 : \mu_1 > \mu_2$ i.e. type first is superior to type second. Now as per test statistic, first we calculate $S^2$ as per the formula given above. So $S^2 = 1659.08$

Now by using above mentioned test statistics, we proceed further;

$$t = \frac{(\bar{x}_1 - \bar{x}_2) - (\mu_1 - \mu_2)}{\sqrt{s^2\left(\frac{1}{n_1} + \frac{1}{n_2}\right)}} = \frac{1234 - 1036}{\sqrt{1659.08\left(\frac{1}{8} + \frac{1}{7}\right)}} = \frac{198}{\sqrt{1659.08 \times 0.2679}} = 9.39$$

Tabulated value of t for 13 degrees of freedom at 5% level of significance for right tail test is 1.77, which is less than the calculated value of t i.e. 9.39. Hence, we reject our null

hypothesis and conclude that two types of items differ significantly.

**B) Hypothesis Test of Population Mean: Two Independent Samples ($\sigma_1^2 \neq \sigma_2^2$)**

When the population variances are not equal, one cannot use the pooled variance estimate as discussed in earlier section. In this case, population variance is estimated by its sample variance. It is important to note that the sampling distribution of the following resulting statistic;

$$t = \frac{(\bar{x}_1 - \bar{x}_2) - (\mu_1 - \mu_2)}{\sqrt{\left(\frac{s_1^2}{n_1} + \frac{s_2^2}{n_2}\right)}}$$

... (8.3)

Where; $\bar{x}_1 - \bar{x}_2$ = Difference in two samples mean; $\mu_1 - \mu_2$ = Difference in two population mean

$s_1^2$ = sample variance for first sample; $s_2^2$ = sample variance for second sample

$n_1$ = first sample size; $n_2$ = second sample size

Degrees of freedom for the above expression is given by the following expression;

$$df = \frac{\left(\frac{s_1^2}{n_1} + \frac{s_2^2}{n_2}\right)^2}{\frac{\left(s_1^2 / n_1\right)^2}{n_1 - 1} + \frac{\left(s_2^2 / n_2\right)^2}{n_2 - 1}}$$ ; Which is often rounded to the nearest integer.

... (8.4)

**Example 10:** Let us consider the following statistics relating to random samples from two normally distributed population,

$\bar{x}_1 = 210$ $s_1^2 = 49$ $n_1 = 18$

$\bar{x}_2 = 198$ $s_2^2 = 16$ $n_2 = 44$

Test the hypothesis that the population mean is not equal at 1 percent significance level.

**Solution:** Null Hypothesis $H_0 : \mu_1 - \mu_2 = 0$ Alternate hypothesis $H_1 : \mu_1 - \mu_2 \neq 0$

Choose a level of significance. The degrees of freedom is calculated as follows:

$$df = \frac{\left(\frac{s_1^2}{n_1} + \frac{s_2^2}{n_2}\right)^2}{\frac{\left(s_1^2/n_1\right)^2}{n_1 - 1} + \frac{\left(s_2^2/n_2\right)^2}{n_2 - 1}} = \frac{\left(\frac{49}{18} + \frac{16}{44}\right)^2}{\frac{(49/18)^2}{17} + \frac{(16/44)^2}{43}} = 21.60 \, (\textit{rounded to } 22)$$

For 22 degrees of freedom, the critical t value at 1 percent significance level is 2.508.

Compute the value of the t test as follows;

$$t = \frac{(\bar{x}_1 - \bar{x}_2) - (\mu_1 - \mu_2)}{\sqrt{\left(\frac{s_1^2}{n_1} + \frac{s_2^2}{n_2}\right)}} = \frac{(12) - (0)}{\sqrt{\left(\frac{49}{18} + \frac{16}{44}\right)}} = 6.85$$

Since the computed value is greater than critical t value, we will reject the null hypothesis in favour of alternate hypothesis implying the mean of two populations are not

equal. In other words, the differences in mean values of two populations are statistically significant.

## 5.4 Hypothesis Test of Population Mean: Dependent Samples (Paired Samples)

The two sample t test is used to determine if two population means are equal. The data may either be paired or not paired. Now we will discuss test hypothesis about two population's means of related or dependent samples. It is called "pairs t test" or dependent sample t test. Under paired t test subjects are matched in pairs and the outcome are compared within each matched pairs.

For example, suppose that we are interested in determining whether the use of certain fuel in the petrol will affect a car' millage. To test this, take n cars and each car mileage per gallon is then determined both before and after using the petrol fuel. This can be tested with the help of paired t test that whether the fuel has any affect on the mileage of cars or not. To analyze dependent samples t test for matched pairs is used. The size of the two samples for this test must be equal. The following formula is used to test the hypothesis of equal mean in case of dependent sample is given as follows:

$$t = \frac{\bar{D}}{\frac{s_D}{\sqrt{n}}}; \quad where\ \bar{D} = \frac{\sum_{i=1}^{n} D_i}{n}; \quad and \quad s_D^2 = \frac{\sum_{i=1}^{n} (D_i - \bar{D})^2}{n-1} = \frac{\sum_{i=1}^{n} D_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} D_i\right)^2}{n-1}$$

; ….. (9.1)

Where ; $n$ = number of pairs, $D_i = X_i - Y_i$ = difference between per and post values.

$\overline{D}$ = Mean sample difference; $S_D$ = Standard error of differences

This test uses sample difference instead of individual values of the sample, it gets converted from two sample to one sample, that is, sample of differences and this is why, this test is defined by (n-1) degrees of freedom. This test assumes that the differences of the two population are normal.

**Example 11:** Ten law students, were sent for moot court competition. The before and after data related to their performance has been listed below. Test the efficacy of moot court competition in enhancing the performance of the students.

| Performance data | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Before | 45 | 73 | 46 | 124 | 33 | 57 | 83 | 34 | 26 | 17 |
| After | 36 | 60 | 44 | 119 | 35 | 51 | 77 | 29 | 24 | 11 |

**Solution:** Lets $D_i$ denotes the differences between the performance before and after moot court competition. It takes the value, 9, 13, 2, 5, -2, 6, 6, 5, 2 and 6.

The mean of

$$D_i = \frac{9+13+2+5-2+6+6+5+2+6}{10} = \frac{52}{10} = 5.2$$

The standard deviation of this difference is

$$s_D = \sqrt{\frac{\sum_{i=1}^{n}(D_i - \bar{D})^2}{n-1}} = 4.08$$

Let the null hypothesis be $H_o$. The moot court competition is not effective i.e. the performance of the students remain same before and after the moot court competition.

So $t = \dfrac{\bar{D}}{\dfrac{s_D}{\sqrt{n}}} = \dfrac{5.2}{\dfrac{4.08}{\sqrt{10}}} = 4.03$

The tabulated value of $t_{0.05}$ = 1.833 for nine degrees of freedom, which is less than the calculated value of $t$ i.e. 1.833< 4.03, hence the null hypothesis is rejected and we conclude that the moot court competition is effective.

## 5.5 Hypothesis Test about Two Population Proportion

When we are dealing with two population proportions, the hypothesis test about equality of two population proportion is tested by the following formula:

$$Z = \frac{(\hat{p}_1 - \hat{p}_2) - (p_1 - p_2)}{\sqrt{p(1-p)\left(\dfrac{1}{n_1} + \dfrac{1}{n_2}\right)}}; \quad where \;\; p = \frac{n_1\hat{p}_1 + n_2\hat{p}_2}{n_1 + n_2} \quad \ldots\ldots (10.1)$$

We will consider an example to illustrate the hypothesis test about equality of two population proportion.

**Example 12:** Mr. Bhairon Singh Shekhawat is the president candidate for a leading national party in India. Four months ago, a survey was conducted to determine what percentage of people will vote for him as president candidate. A random sample of 800 voters revealed that 35% would vote for him. Now, another survey was conducted this month. Of a sample of 450, 51% voters will vote for him. Can we infer at 5%

significance level that the Mr. Shekhawat chances of winning have increased?

**Solution:** Let us consider the following statistics relating to this problem

$\hat{p}_1 = 0.35$ $\quad n_1 = 800$

$\hat{p}_2 = 0.51$ $\quad n_2 = 450$

Null hypothesis $H_0 : p_1 - p_2 = 0$ Vs Alternate hypothesis $H_1 : p_1 - p_2 \neq 0$

$$Z = \frac{(\hat{p}_1 - \hat{p}_2) - (p_1 - p_2)}{\sqrt{p(1-p)\left(\frac{1}{n_1} + \frac{1}{n_2}\right)}} = \frac{(0.35 - 0.51) - (0)}{\sqrt{0.40(1-0.40)\left(\frac{1}{800} + \frac{1}{450}\right)}} = -8$$

so $|Z| = 8$; tabulated Z value at 5% level of significance is 1.96. Since the computed value is greater than critical Z value, we will reject the null hypothesis in favour of alternate hypothesis implying the two population proportion are not equal. In other words, the difference in two proportion values is statistically significant and his chances of winning has increased in recent months.

## 5.6 Hypothesis Test about Two Population Variances

Let the two samples $\{x_1, x_2, x_3, ....., x_{n_1}\}$ and $\{y_1, y_2, y_3, ....., y_{n_2}\}$ of sizes $n_1$ and $n_2$ be drawn from the same normal population having variance $\sigma^2$. The means of the samples are

$$\bar{x} = \frac{\sum_{i=1}^{n_1} x_i}{n_1}; \bar{y} = \frac{\sum_{i=1}^{n_2} y_i}{n_2};$$

And sample variances are

$$S_1^2 = \frac{\sum_{i=1}^{n_1} (x_i - \bar{x})^2}{n_1 - 1} \text{ and } S_2^2 = \frac{\sum_{i=1}^{n_2} (y_i - \bar{y})^2}{n_2 - 1}$$

Then test statistics F is defined as : $F = \frac{S_1^2}{S_2^2}$ *if* $S_1^2 > S_2^2$ .... (11.1)

This follows F distribution with $n_1 - 1$ and $n_2 - 1$ degrees of freedom.

**Example 13:** An estimated population variance of 3.0 was obtained from a sample of size 13, while an estimate of 2.5 was obtained from a sample of size 15. Could the populations of both samples share the same variance?
(***Given*** $F_{0.05} = 2.53$ ***, for 12 and 14 degrees of freedom***)

**Solution:** Here $n_1 = 13, n_2 = 15, S_1^2 = 3, S_2^2 = 2.5$.

Let $H_0$: the two samples have been drawn from the same population with same variance.

So $F = \frac{S_1^2}{S_2^2} = \frac{3}{2.5} = 1.2$

But $F = 1.2$ is less than tabulated value which is given as 2.53, so null hypothesis cannot be rejected. Therefore, we conclude that the two samples have been drawn from same population.

## 6. Analysis of Variance (ANOVA)

Analysis of variance is used when we wish to test the statistical significance of differences among the mean of three or more independent groups. Student 't' test can be used to compare the significance of differences between more than two means but it will increase the chances of committing type I error. So, Analysis of Variance (ANOVA) is the best suited design in this type of situations.

While conducting Analysis of Variance (ANOVA), we divide the variance of the scores into two components. The first is related to the variability between groups, and the second one is linked with the variability within the groups. For this first we calculate the sum of squares between the groups (SSB), and the sum of squares within groups (SSW). Then these sum of squares are divided by their corresponding degrees of freedom for calculating the mean square between groups (MSB), and the mean square within groups (MSW) respectively. Lastly the F-ratio, is calculated by taking the ratio of the mean square between groups (MSB) to the mean square within groups (MSW).
In case when we are dealing with single independent variable or a single factor, then it is known as **One-Way ANOVA.** Likewise in case of **two** independent variables it is referred as two ways ANOVA, and similarly for '**n'** independent variables it can be known as '**n-way ANOVA'**.

**Assumptions:**

- **i)** The Samples are drawn randomly and independently from the population.
- **ii)** The Sample are drawn from normally distributed population
- **iii)** Population variances are equal.

### 6.1 One-Way ANOVA

One-way ANOVA (Analysis of Variance) is used to compare means from three or more groups to determine statistical significances of their differences. It is an extension of the t-test, which is used to compare means between two groups. In a one-way ANOVA, we have one independent variable (also known as a factor) that divides the data into multiple groups. The dependent variable is the numerical outcome that we are measuring in each group.

The null hypothesis of the one-way ANOVA is that there is no difference in means among the groups, meaning that any observed differences are due to random variation. The alternative hypothesis is that at least one group mean is different from the others. In other words, our null and the alternate hypotheses are:

$$H_0 : \mu_1 = \mu_2 = \mu_3 = .... = \mu_n$$

$$H_1 : at\ least\ one\ mean\ is\ different$$

To perform a one-way ANOVA, we calculate the variance within each group (within-group variability) and the variance between the groups means (between-group variability). If the between-group variability is significantly larger than the within-group variability, we reject the null hypothesis and conclude that there is a significant difference among the group means. If the one-way ANOVA indicates a statistically significant difference, further post-hoc tests, such as Tukey's HSD or Bonferroni tests, may be performed to determine which specific group means differ significantly from each other.

It is important to note that one-way ANOVA assumes the data meet certain assumptions, such as normality and

homogeneity of variances. Violation of these assumptions might lead to inaccurate results, and researchers should take appropriate steps to address these issues before drawing any conclusions from the analysis.

The total variation in dependent variable (Y), denoted by $SS_Y$, is given as follows;

$$SS_Y = SS_X + SS_{Error} \quad \text{..... (12.1)}$$

Further,

Where

$$SS_Y = \sum_{i=1}^{N}\left(Y_i - \bar{Y}\right)^2; SS_X = \sum_{j=1}^{c} n\left(\bar{Y}_j - \bar{Y}\right)^2; SS_{Error} = \sum_{j}^{c}\sum_{i}^{n}\left(Y_{ij} - \bar{Y}_j\right)^2$$

..... (12.2)

$Y_i$ = individual observation; $\bar{Y}_j$ = average for category j ;

$\bar{Y}$ = Grand mean

$Y_{ij}$ = $i^{th}$ observation in $j^{th}$ category

The F statistic is given by the following formula:

$$F = \frac{\frac{SS_X}{(c-1)}}{\frac{SS_{Error}}{(N-c)}} \quad \text{.... (12.3)}$$

**Example 14:** The Royal Bank of Scotland has three main branches in Scotland, and the management wants determine whether there is difference in the average business (million $) given by the three branches. The following table gives data relating to 8 randomly selected months' business at each branch. Test the hypothesis that the average businesses of three branches are equal at 5 percent significance level.

| **Branch 1** | **15** | **18** | **21** | **24** | **20** | **16** | **22** | **26** |
|---|---|---|---|---|---|---|---|---|
| **Branch 2** | 30 | 28 | 24 | 27 | 32 | 34 | 31 | 29 |
| **Branch 3** | 26 | 24 | 18 | 25 | 30 | 28 | 27 | 22 |

**Solution:** In this case our null and alternate hypotheses are:

$H_0 : \mu_1 = \mu_2 = \mu_3$

$H_1 : at\ least\ one\ mean\ is\ different$

Now let's compute category mean and grand mean as follows;

| **Branch 1** | **Branch 2** | **Branch 3** |
|---|---|---|
| **15** | 30 | 26 |
| **18** | 28 | 24 |
| **21** | 24 | 18 |
| **24** | 27 | 25 |
| **20** | 32 | 30 |
| **16** | 34 | 28 |
| **22** | 31 | 27 |
| **26** | 29 | 22 |
| $\overline{X}_1 = 20.25$ | $\overline{X}_2 = 29.37$ | $\overline{X}_3 = 25$ |
| **Grand Mean** | $\frac{20.25 + 29.37 + 25}{3}$ =24.87 | |

Now various sums of squares are as follows;

$$SS_Y = \sum_{i=1}^{24}\left(Y_i - \overline{Y}\right)^2 = (15-24.87)^2 + (18-24.87)^2 + \ldots\ldots\ldots\ldots + (22-24.87)^2 = 600.26$$

$$SS_X = \sum_{j=1}^{3} n\left(\bar{Y}_j - \bar{Y}\right)^2 = 8\left(20.25 - 24.87\right)^2 + 8\left(29.37 - 24.87\right)^2 + 8\left(25 - 24.87\right)^2 = 332.89$$

$$SS_{Error} = \sum_{j}^{3}\sum_{i}^{24}\left(Y_{ij} - \bar{Y}_j\right)^2 = \left(15 - 20.25\right)^2 + \ldots\ldots + \left(26 - 20.25\right)^2 + \left(30 - 29.37\right)^2 + \ldots\ldots + \left(29 - 29.37\right)^2$$
$$+ \left(26 - 25\right)^2 + \ldots\ldots + \left(22 - 25\right)^2 = 267.37$$

Further $SS_Y = SS_X + SS_{Error} = 600.26 = 332.89 + 267.37$. The above null hypothesis can now be tested as follows:

$$F = \frac{\frac{SS_X}{(c-1)}}{\frac{SS_{Error}}{(N-c)}} = \frac{\frac{332.89}{(3-1)}}{\frac{267.37}{(24-3)}} = 13.07$$

Thus, the calculated F value is 13.07. At 5% level of significance the tabulated F value at 2, 21 degrees of freedom is 3.47. Since the calculated value F value is greater than the tabulated F value, hence we will reject the null hypothesis and conclude that the average businesses of three branches are not equal.

### 6.2 The Chi-Square Test

The chi-square test is a non-parametric test widely used in research work. It was first used by Karl Pearson in 1900. This test measures the difference between the actual observed and expected frequencies. The symbol $x^2$ stands for chi-square distribution which is defined by degrees of freedom. It is a positively skewed distribution. As the sample size increases, the chi-square distribution starts becoming symmetrical approaching normality.

The Chi-square test is used to study the difference between actual observed and expected frequencies. If the

actual and expected frequencies are equal i.e. there is no difference between actual and expected frequencies, then the value of Chi-square will be zero. However, when actual frequencies start diverging from expected frequencies, the value of Chi-square will start increasing. In fact, the Chi-square test is a test of whether the divergence between actual and expected frequencies is due to chance or not.

### 6.2.1 Chi-Square Test: Goodness-of-Fit test

The Chi-squared goodness-of-fit test is used to compare a theoretical distribution, such as binomial, Poisson etc., with the observed data from a random sample. The Chi-square test, in fact, answers the question, "Are the data from binomial, passion or normal distribution?"

The chi-square test is useful in case of univariate distribution where you can easily find cumulative frequency. This test is applicable to categorical data where data are put into various classes. In this case our null and alternate hypotheses are:

$H_0$: There is no difference between observed and expected frequencies
$H_1$: There is difference between observed and expected frequencies

The following test statistic is used to test the above hypothesis:

$$\chi^2 = \sum_{i=1}^{n} \frac{(O_i - E_i)^2}{E_i} \qquad \text{.... (15.1)}$$

Where $O_i$ = observed frequency for the i$^{th}$ category

$E_i$ = expected frequency for the i$^{th}$ category

The decision rule is when the calculated value of $x^2$ is greater than tabulated value of $x^2$ reject the null hypothesis at specified level of significance.

**Condition for the application of chi square test:**

i) Sample size N should be large; reasonably N should be at least 50.
ii) Minimum observed frequency should be 10. So cells one, two or more with lesser frequencies are to be combined to make the total of their frequencies = 10 or more.
iii) Constraints on cell frequencies are linear.

**Example 15:** A manager of a company wants to know whether sale of his product is uniformly distributed in a year. Understanding this fact might help in planning sales of his product and storage. The following data gives units sold in a year.

| **Month** | **Sales (Units)** |
|---|---|
| Jan. | 3480 |
| Feb | 3090 |
| March | 4128 |
| April | 4012 |
| May | 3250 |
| June | 2800 |
| July | 4810 |
| August | 3186 |
| Sept. | 5020 |
| Oct | 4500 |
| Nov | 4230 |
| Dec | 4120 |

Find out whether the sales are same in each month at 5 percent significance level.

**Solution:** In this case our null and alternate hypotheses are:

$H_0$: There is no difference between observed sales and expected sales
$H_1$: There is difference between observed sales and expected sales

| **Categories** | **Observed Frequency** | **Expected Frequency** | $\frac{(O_i - E_i)^2}{E_i}$ |
|---|---|---|---|
| January | 3480 | 3885.5 | 42.31 |
| February | 3090 | 3885.5 | 162.86 |
| March | 4128 | 3885.5 | 15.13 |
| April | 4012 | 3885.5 | 4.11 |
| May | 3250 | 3885.5 | 103.94 |
| June | 2800 | 3885.5 | 303.25 |
| July | 4810 | 3885.5 | 219.97 |
| August | 3186 | 3885.5 | 125.92 |
| September | 5020 | 3885.5 | 331.25 |
| October | 4500 | 3885.5 | 97.18 |
| November | 4230 | 3885.5 | 30.54 |
| December | 4120 | 3885.5 | 14.15 |
| Total | 46626 | 46626 | 1450.67 |

$$\chi^2 = \sum_{i=1}^{n} \frac{(O_i - E_i)^2}{E_i} = 1450.67$$

The critical $x^2$ value for 11 degrees of freedom and at 5% level of significance level is 19.67. Since the computed value is greater than critical $x^2$ value, we will reject the null

hypothesis in favour of alternate hypothesis implying that the sales in each month is not the same.

### 6.2.2 Chi-Square Test of Independence

The chi-sqaured test of independence is used to find relationship between two categorical variables. For example, is there relationship between gender and smoking? Is there relationship between gender and salaries? Before discussing chi-square test of independence, we would like to introduce a term called **contingency table**. In simple words, a contingency table shows observed frequencies in columns and rows classified in order to find relationship between two or more categorical variables. The simplest contingency table is a 2x2 table shown below:

| | **Male** | **Female** | **Total** |
|---|---|---|---|
| **Smoke** | 60 | 14 | **74** |
| **Don't Smoke** | 24 | 80 | **104** |
| **Total** | **84** | **94** | **178** |

The right-hand column and the bottom row figures are called marginal totals. After arranging data into columns and rows in a contingency table, the next thing is to find the relationship between smoking and gender. Is smoking independent of sex? If you want to test this, the relevant test is the chi-square test of independence. In other words, the chi-square test is a test to find whether to categorical variables are related or not. If the two categorical variables are independent, the expected frequency for the above contingency table in each cell is given by the following expression:

$E = \frac{RT \times CT}{GT}$ ; Where RT = Row total, CT= Column total, GT= Grand total

The test statistic is given as follows: $\chi^2 = \sum_{i=1}^{n} \frac{(O_i - E_i)^2}{E_i}$

Where degrees of freedom = (r-1) (c-1) ; r = total number of rows; c = total number of columns

**Example 16:** A researcher wishes to know whether voting is independent of gender or not. For this purpose, he has randomly selected sample of 430 voter's data from the latest assembly election. The results of the survey are summarized in the following contingency table:

| | **Male** | **Female** | **Total** |
|---|---|---|---|
| **Voted** | 160 | 110 | **270** |
| **Not Voted** | 95 | 65 | **160** |
| **Total** | **255** | **175** | **430** |

Test the hypothesis that gender and voting are independent with each other at 1% LOS.

**Solution:** In this case our null and alternate hypotheses are:

$H_0$: There is no relationship between voting and gender
$H_1$: There is relationship between voting and gender

Compute the value of the $x^2$ test. Before calculating $x^2$ value, we have to determine expected frequencies as shown below:

$$E_{11} = \frac{RT \times CT}{GT} = \frac{(270)(240)}{430} = 150.69$$

$$E_{12} = \frac{RT \times CT}{GT} = \frac{(270)(190)}{430} = 119.30$$
$$E_{21} = \frac{RT \times CT}{GT} = \frac{(160)(240)}{430} = 100.46$$
$$E_{22} = \frac{RT \times CT}{GT} = \frac{(160)(190)}{430} = 70.69$$

Now we can compute the chi-square value by summing $(O_i - E_i)^2/E_i$ for every cells.

$$\chi^2 = \frac{(160-150.69)^2}{150.69} + \frac{(110-119.30)^2}{119.30} + \frac{(95-100.46)^2}{100.46} + \frac{(65-70.69)^2}{70.69}$$

= 0.5751 + 0.7249 + 0.2967 + 0.4580 = 2.054

Thus, calculated value of $x^2$ is 2.054. The critical $x^2$ value for 1 degree of freedom and 1% level of significance is 6.63. Since the computed value is less than critical $x^2$ value, we cannot reject the null hypothesis meaning there is no relationship between voting and gender. Thus, based on the research the political analyst can infer that voting is independent of gender.

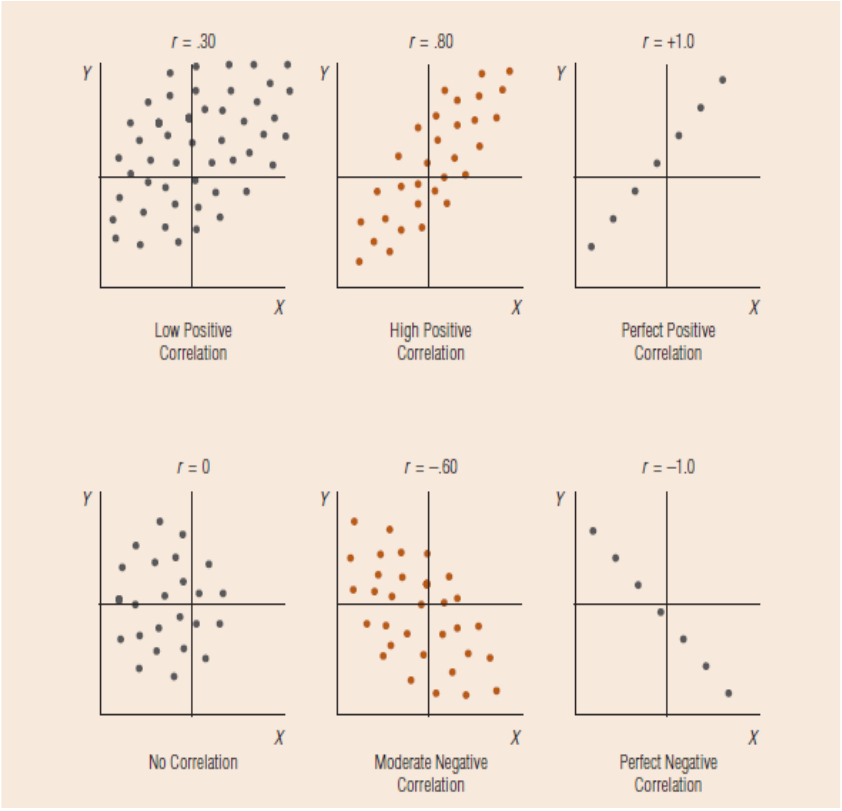
### 6.3 Correlation

Correlation can be defined as the degree of relationship/ association between two or more variables. When the extent of relationship between two variables is studied, it is called simple correlation. If it involves two or more variables then, it is called multiple correlations.

#### 6.3.1 Scatter Diagram

It is a simple graphical way to represent a bivariate data. Such a plot permits us to see at a glance the degree and pattern of relation between the two variables. The diagram of

dots that results when the values of the variables X and Y are plotted on the x-axis and the y-axis, respectively, on the xy plane is known as a scatter diagram.




**Scatter Diagram**

### 6.3.2 Types of Correlation

**Positive Correlation:** If two variables are moving in the same direction i.e either they increase together or decrease together then this type of correlation is known as positive correlation. For example, height and weight, the taller people tend to be heavier, and vice versa.

**Negative Correlation:** If two variables are moving in the opposite direction i.e., when one is increasing the other start decreasing and vice versa then this type of correlation is known as negative correlation. For instance, when price increases quantity demanded declines and vice versa.

### 6.3.3 Karl Pearson Coefficient of Correlation

As we know that the scatter plot is a graphical way of finding relationship between two variables. Scatter plots, however, allow only a subjective and general description of relationships. The degree of measure of association between two variables can be determine by correlation coefficient. It is denoted by 'r' and it is ranging between -1 and +1. The formula of correlation coefficient $'r'$, is given as follows;

$$r = \frac{Cov(X,Y)}{\sigma_x \sigma_y} = \frac{\sum (X_i - \bar{X})(Y_i - \bar{Y})}{\sqrt{\sum (X_i - \bar{X})^2 . \sum (Y_i - \bar{Y})^2}} = \frac{\sum X_i Y_i - n.\bar{X}.\bar{Y}}{\left(\sqrt{\sum X_i^2 - n.\bar{X}^2}\right)\left(\sqrt{\sum Y_i^2 - n.\bar{Y}^2}\right)}$$

It can be shown that the correlation must lie between -1 and 1; that is $-1 \le r \le +1$. With the following interpretations:

a) r = -1 implies perfect negative linear correlation.
b) r = +1 implies perfect positive linear correlation.
c) r = 0 implies no linear correlation.

**Assumptions:**

a) There is linear relationship between the variables.
b) Each of the variables or series is being affected by a large number of independent contributory causes of such a nature as to produce normal distribution.
c) The forces so operating on each of the variable series are not independent of each other but are related in a causal fashion.

**Example 17:** Twelve students from two sections of class 5th has been chosen randomly. Find the correlation coefficient between the marks obtained by them in mathematics.

| Student | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Marks in Section_ A | 23 | 18 | 29 | 22 | 33 | 20 | 17 | 25 | 27 | 30 | 25 | 27 |
| Marks in Section_ B | 19 | 18 | 24 | 23 | 31 | 22 | 16 | 23 | 24 | 26 | 24 | 28 |

**Solution:**

| Student | Marks _ A | Marks _ B | $(X_i - \bar{X})$ | $(Y_i - \bar{Y})$ | $(X_i - \bar{X})(Y_i - \bar{Y})$ | $(X_i - \bar{X})^2$ | $(Y_i - \bar{Y})^2$ |
|---|---|---|---|---|---|---|---|
| 1 | 20 | 19 | -3.75 | -4.5 | 16.875 | 14.0625 | 20.25 |
| 2 | 18 | 18 | -5.75 | -5.5 | 31.625 | 33.0625 | 30.25 |
| 3 | 29 | 24 | 5.25 | 0.5 | 2.625 | 27.5625 | 0.25 |
| 4 | 22 | 23 | -1.75 | -0.5 | 0.875 | 3.0625 | 0.25 |
| 5 | 30 | 31 | 6.25 | 7.5 | 46.875 | 39.0625 | 56.25 |
| 6 | 20 | 22 | -3.75 | -1.5 | 5.625 | 14.0625 | 2.25 |
| 7 | 17 | 16 | -6.75 | -7.5 | 50.625 | 45.5625 | 56.25 |
| 8 | 24 | 23 | 0.25 | -0.5 | -0.125 | 0.0625 | 0.25 |
| 9 | 23 | 24 | -0.75 | 0.5 | -0.375 | 0.5625 | 0.25 |
| 10 | 30 | 30 | 6.25 | 6.5 | 40.625 | 39.0625 | 42.25 |
| 11 | 25 | 24 | 1.25 | 0.5 | 0.625 | 1.5625 | 0.25 |
| 12 | 27 | 28 | 3.25 | 4.5 | 14.625 | 10.5625 | 20.25 |
| **Total** | **285** | **282** | **0** | **0** | **210.5** | **228.25** | **229** |

$$\bar{X} = 23.75;\ \bar{Y} = 23.5; \sum (X_i - \bar{X})(Y_i - \bar{Y}) = 210.5; \sum (X_i - \bar{X})^2 = 228.25; \sum (Y_i - \bar{Y})^2 = 229$$

$$r = \frac{Cov(X,Y)}{\sigma_x \sigma_y} = \frac{\sum (X_i - \bar{X})(Y_i - \bar{Y})}{\sqrt{\sum (X_i - \bar{X})^2 . \sum (Y_i - \bar{Y})^2}} = \frac{210.5}{\sqrt{(228.25)(229)}} = 0.920723$$

With a sample correlation coefficient '$r = 0.920723$, we can see that there is a positive and relatively strong correlation between the marks obtained by the students' in both the sections.

## 14.2 Spearman's Rank Order Correlation

Researchers often encounter finding degree of association between two ordinal scaled variables, which is not normally distributed. For this, method of finding correlation between ranked data was devised by British Psychologist Prof. Charles Edward Spearman in 1904. Spearman's rank order correlation is denoted by $\rho$ (rho), and it is defined as;

$$\rho = 1 - \frac{6\sum_{i=1}^{n} D_i^2}{N\left(N^2 - 1\right)} \quad or \quad 1 - \frac{6\sum_{i=1}^{n} D_i^2}{\left(N^3 - N\right)}$$

Where $D_i$ = difference in ranks of the two variables
N = Total number of items ranked

In case of tied ranks it is a customary to give each individual an average rank. Thus, if two individuals are ranked equal at fourth place, they are each given the ranks (4+5)/2, i.e., 4.5 while, if three are ranked equal at fifth place, they are given the ranks (5+6+7)/3= 6. For this situation formulas for finding correlation is given as follows;

$$\rho = 1 - \frac{6\left\{\sum_{i=1}^{n} D_i^2 + \frac{1}{12}(m^3 - m) + \frac{1}{12}(m^3 - m) + .....\right\}}{N\left(N^2 - 1\right)}$$

Where m stands for the number of items whose ranks are common,

**Example 18:** The table given below provides ranking of 15 countries according to Gross National Product (GNP) and Human Development Index (HDI) ranking. Find the correlation between GNP and HDI rankings for the 15 countries.

| Countries | Ranking by GNP | Ranking by HDI | Countries | Ranking by GNP | Ranking by HDI | Countries | Ranking by GNP | Ranking by HDI |
|---|---|---|---|---|---|---|---|---|
| Australia | 14 | 7 | Germany | 3 | 14 | Netherlands | 13 | 13 |
| Brazil | 11 | 4 | India | 12 | 10 | Spain | 9 | 15 |
| Canada | 8 | 11 | Italy | 7 | 2 | Switzerland | 15 | 5 |
| China | 14 | 9 | Japan | 2 | 8 | U K | 4 | 1 |
| France | 5 | 6 | Mexico | 10 | 12 | U S | 1 | 3 |

**Solution:**

| **Countries** | **Ranking by GNP** | **Ranking by HDI** | **D** | **D2** |
|---|---|---|---|---|
| **Australia** | 14 | 7 | 7 | 49 |
| **Brazil** | 11 | 4 | 7 | 49 |
| **Canada** | 8 | 11 | -3 | 9 |
| **China** | 14 | 9 | 5 | 25 |
| **France** | 5 | 6 | -1 | 1 |
| **Germany** | 3 | 14 | -11 | 121 |
| **India** | 12 | 10 | 2 | 4 |
| **Italy** | 7 | 2 | 5 | 25 |
| **Japan** | 2 | 8 | -6 | 36 |
| **Mexico** | 10 | 12 | -2 | 4 |
| **Netherlands** | 13 | 13 | 0 | 0 |
| **Spain** | 9 | 15 | -6 | 36 |
| **Switzerland** | 15 | 5 | 10 | 100 |
| **United Kingdom** | 4 | 1 | 3 | 9 |

| | | | | |
|---|---|---|---|---|
| **United States** | 1 | 3 | -2 | 4 |
| | | | | $\sum_{i=1}^{n} D_i^2 = 472$ |

Using the data from the above table, Spearman's rank order correlation would be calculated as follows:

$$\rho = 1 - \left( \frac{6 \times (2832)}{(15)^3 - 15} \right) = 0.16$$

The correlation between two rankings is positive which implies that higher ranking on GNP are associated with higher ranking on the HDI. Nonetheless, the correlation is positive but the degrees of correlation between these two ranks were very low.

**Example 19:** Calculate the coefficient of correlation from the following data.

| **Marks of class A** | **10** | **4** | **2** | **5** | **8** | **5** | **6** | **9** |
|---|---|---|---|---|---|---|---|---|
| **Marks of class B** | 10 | 6 | 2 | 5 | 8 | 4 | 5 | 9 |

**Solution:**

| **Marks of class A** | **Rank for class A** | **Marks of class A** | **Rank for class B** | **Rank difference (D)** | **D2** |
|---|---|---|---|---|---|
| **10** | **1** | **10** | **1** | **0** | **0** |
| **4** | **7** | **6** | **4** | **3** | **9** |

| | | | | | |
|---|---|---|---|---|---|
| **2** | **8** | **2** | **8** | **0** | **0** |
| **5** | **5.5** | **5** | **5.5** | **0** | **0** |
| **8** | **3** | **8** | **3** | **0** | **0** |
| **5** | **5.5** | **4** | **7** | **-1.5** | **2.25** |
| **6** | **4** | **5** | **5.5** | **-1.5** | **2.25** |
| **9** | **2** | **9** | **2** | **0** | **0** |
| | | | | | $\sum_{i=1}^{n} D_i^2 = 13.50$ |

$$\rho = 1 - \frac{6\left\{\sum_{i=1}^{n} D_i^2 + \frac{1}{12}(m^3 - m) + \frac{1}{12}(m^3 - m) + .....\right\}}{N\left(N^2 - 1\right)}$$

$$\rho = 1 - \frac{6\left\{13.5 + \frac{1}{12}(2^3 - 2) + \frac{1}{12}(2^3 - 2)\right\}}{8\left(8^2 - 1\right)} = 1 - \frac{6 \times 14.5}{8 \times 63} = 0.827$$

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## Chapter - 5

# INTERDISCIPLINARY RESEARCH

*R. K. Chopra**

## I. Prologue

While introducing the subject of inter-disciplinary research, it is important to know what it really means. Knowing a subject singly means living in an isolated world, whereas if we look a same problem with different prospective/dimensions and then analyse, we find that a complex issue has been solved in a one-go instead of doing research on individual topic. Here, it is worth mentioned about the contribution of Einstein who developed the Theory of Relativity by taking four dimensions together in a single go that is, X, Y and Z coordinates along with T being time; wherein X, Y, Z are nothing but three dimensional coordinates and T being time. Since, the entire planet is moving and therefore every object has to be observed with regard to time. This theory provided the scientists and researchers to dissect a complex problem and make it as simple as possible. It also shows that how different disciplines becomes important and relevant and thereby, leading to the need for interdisciplinary research.

If one looks into separation of hydrogen and oxygen from water at lab scale level, one finds it is very simple in

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nature but at that time, there was no idea about creation of hydrogen bomb and its utility for humanity. This shows that solution(s) to any problem to be seen in a multi-centric, multi-ethnic complex society, which is taking novel dimensions in the ever-globalizing world, requires cue or insights from different disciplines, say social, political, economic, geographical, psychological, and making best use of concepts understood differently, in interdisciplinary research. That means, while dealing with the subject of inter-disciplinary research, one is trying to draw a road map or ground level strategies to address the future needs as well as the current challenges from nature too. In fact, the law of nature suggests that humans cannot sustain themselves permanently, but the nature and society will. Therefore, one of the core objectives of interdisciplinary research should be the optimal utilization of resources in order to provide the best outcome to humanity by providing the most efficient, sustainable and logical solution. However, if the mindset of researcher(s) is not clear, it may lead to distortion, diffractions, interference and confusion. With rapid changes unfolding in the domains of technology and societal transformation, research has become mandatory to move forward through systematic study of an unexplored phenomenon in order to suggest reforms and cater to the challenges of an ever-integrated global order. All of this becomes more relevant and feasible with the utility of interdisciplinary field. As can be seen in behavioural sciences; the researches are more of a doctrinal type as the empirical data is not readily available in most cases. In contrast, interdisciplinary research uses statistical tools through empirical data, which provide meaningful outcome.

In view of foregoing discussion, it is expected that the empirical research on a topic of contemporary relevance will assist the governmental bodies in revisiting their policies for

emancipation of society making interdisciplinary research even more pertinent and relevant in the present-day context. In this article, an attempt has been made to understand issues and challenges along with the reasons for conducting interdisciplinary research and its much-coveted benefits to the public at large.

## II. Interdisciplinary research and its nature

Inter-disciplinary research is commonly mentioned as a mixed blend of two disciplines on the same subject. However, Repko and Szostak, in their book, *Interdisciplinary Research*[1], have eloquently defined the meaning of the words "inter", "disciplinary", and "studies" as "inter" means "between or among", disciplinary is "of or relating to a particular field of study or specialization", and the integral part, "studies" meaning, "fundamental challenges to the existing structure of knowledge".

To be very precise, the term 'Interdisciplinary studies' is quintessentially different from multidisciplinary and transdisciplinary studies. In multidisciplinary studies, disciplines provide separate non-integrated contributions. In contrast, in interdisciplinary studies, concepts from different discipline are integrated. In transdisciplinary studies, the focus is on creating total systems of knowledge or new theories about a set of objects in the world by synthesizing theories from different disciplines. Whereas, in interdisciplinary studies, the problem is more focused rather than the multidisciplinary research. Further, within the epistemological foundations of interdisciplinary studies, the research is grounded in a well-defined problem and focuses on creating knowledge, which

[1] ALLEN F. REPKO & RICK SZOSTAK, INTERDISCIPLINARY RESEARCH: PROCESS AND THEORY (4th ed. 2017).

is more comprehensive and possesses high transformative utility[2].

It is a well-established fact that social science research focuses on finding reasons for human behaviour[3]. However, when scientific methods are used there, the outcomes become more reliable and valid and therefore, a researcher's first job is to search information either as a primary source or secondary source and in interdisciplinary research the boundary limits are fixed by researcher(s) and accordingly search for literature or have broad information about the industrial product (subject) on which research is to be conducted. After analyzing the existing literature on the subject and finding out the gaps, research questions are fixed and hypothesis is formulated to enable the researcher(s) to conduct research and perform analysis and interpretation leading to conclusions and suggesting a way forward. This is true in any research activity and is bit more complex in interdisciplinary research[4]. Literature review is the backbone of any research activity i.e., a comprehensive collaborative review of all relevant articles, journals, books, statues, and legislative enactments, etc., to identify the issues, which have not been addressed by the past scholars and relate the findings to the extent of realistic constructs. It serves as an entry gate for research, which depicts the gaps and need for exploring further (if any). Moreover, it also suggests that experts in the area can provide their guidance to the

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[2] Rahal & Vadeboncoeur, *Interdisciplinarity*, SALEM PRESS ENCYCLOPEDIA, URL: https://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=ers&AN=89550590&authtype=sso&custid=ns013076&site=eds-live&scope=site&custid=ns013076 (Last Visited on 30 March 2022).

[3] Dana Dance-Schissel, *What Is Social Science Research? - Definition, Methods & Topics,* STUDY.COM, URL: https://study.com/academy/lesson/what-is-social-science-research-definition-methods-topics.html (Last Visited on 30 March 2022).

[4] BOUNDLESS PSYCHOLOGY, URL: https://courses.lumenlearning.com/boundless-psychology/chapter/the-scientific-method/ (Last Visited on 30 March 2022).

researchers so that they are able to develop the concept in other disciplines as well, in order to have a common understanding on the expected contribution in an interdisciplinary subject for collaborating in a coherent manner.

Social research can be broadly categorised into four major types namely: primary research, secondary research, qualitative research, and quantitative research[5]. In interdisciplinary research, where law is one of the parameters of research, one may be required to look into the role of legislature while legislating and formulating policies for executive to implement and judiciary in interpreting law. The researcher studies the social arrangement and through findings and suggestions, helps the governmental bodies in making, modifying and reforming law and policies in a manner that benefits the society in bringing social order and control[6].

It is a fact that, the scientists do research on the physical aspects of the world whereas social scientists conduct researches to analyze social behaviour of human beings. However, both research areas are important in understanding the natural and social phenomena and this is why it is said that a research will be complete if both behavioural as well as technical issues are taken into consideration[7]. Taking account of research in a single area will provide incomplete response as it misses the holistic approach. Therefore, it becomes important to see whether a

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5 INDEED.COM, https://www.indeed.com/career-advice/career-development/social-research (Last visited Mar. 30, 2022)

6 Manish Singh, *Research Methodology*, E-PATHSHALA, URL: http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09._research_methodology/04._socio-legal_research/et/8151_et_et.pdf (Last Visited on 30 March 2022).

7 Raymond W. Mack, *How Scientific is Social Science,* 12 A REVIEW OF GENERAL SEMANTICS 201, (1955).

combination of two disciplines adds synergy to a research problem or leads towards contradictions, ambiguity; say for instance in the areas of astronomy and astrology. To explain further, an interpretation given by astronomer and astrologer on the same phenomenon could be different. The formation of a lunar eclipse, scientist explain the phenomenon based on the scientific interpretation due to the positioning of the earth and moon; whereas, an astrologer would be more inclined on talking in terms of the moon sign and the sun sign thereby, elaborating the impact of an eclipse based on their preconceived concepts and impact on human life. Clearly, there is a gap in interpretation, which warrants a need for coherent approach.

From replacing candles to ushering in the age of digitization with the advent of internet of things and artificial intelligence, the technology as an evaluative yet encompassing tool is providing multiple usage through application programs impacting day to day life of each one of us. Say; from soil testing by farmers, putting right kind of seeds and making sure that in all seasons the crop provides best yield. This is possible when economic and agricultural aspects are taken as an interdisciplinary research.

In a capitalist society, the capital earned can be converted into property as well as other means of equal value which implies that the one who has more money also has a power to deploy others to perform their work and thereby, enhancing his capital as well as providing compensation to others for the work done or services performed.

Taking another example from Indian Constitution came into existence, everyone had the freedom to own and acquire property. However, merely in a span of thirty (30) years or so, it was felt prudent that let the economic, social, and political rights of the individual take the back seat and

the Gandhian philosophy of providing social justice to public at large be on fore front. The Indian courts justified the 44th amendment to the Indian Constitution wherein the *right in rem* was preferred over the *right in persona* and right to property became a legal right not a fundamental right; as it was envisaged for the welfare of society.

The Government can provide better welfare measures provided the resources which are concentrated in the hands of few rich persons can be taken and facilities are provided to the public at large thereby justifying the right to property as a normative breakthrough in a capitalist society and in this way it can be said that the property rights are not absolute or fundamental and whenever the state so considers, can take these away.

This shows that needs of the society go on changing and there is always a seesaw battle between a Status and a Contract, which suggest the researchers to have more than one-dimensional approach. It was for this reason that the right to property under Article 300A of the Indian Constitution has become a legal right only[8]. From 1970s to 1990s, the world saw a period in which societal rights were given more importance and corporates were made responsible and accountable to public to begin with. However, during the liberalization process, from 1991 till date, the capitalist (corporate) accountability also came out as one of the relevant factor-perceiving world is now seen as a single unit. This is one of the biggest instances of confluence of economy and law; as it casts a duty on the State to adopt a coherent approach as seen through different lens but with common goal, in a coherent manner.

[8] Right to property became a legal right for the benefit of public at large.

Therefore, one can start with an assumption that the interdisciplinary research is expected to provide a reflection by adding new dimension about understanding a problem and arriving at a solution. Research without reflection is like eating without digesting. This requires a need to find the gap between the different disciplines and to bridge the gap between academia and industry so as to find out the discrepancies between the two after analysis and propose effective solutions based on experience of industry experts and application of the research tools so that what is being taught is applied to a real day problem so that education system understands industry and the industry understands the academia.

Let us analyze the case of crypto-currency and its relationship with national economy. First thing, which comes to mind is when each nation has its own currency and the same can be converted into internationally well-recognized currencies, why do we need crypto currency? This can be seen in context of nations having a tax control regime and a tax-free zone. Therefore, it is a topic of research that why a globalized currency is required which is not permitted by national jurisdiction, except tax-free nations.

**III. Interdisciplinary approach and its benefit**

In essence, the emerging reliance on interdisciplinary research as a *modus operandi* is on account of its attribute which assists in research by conducting the study through collaboration with individuals or a team to integrate concepts or theories including information techniques, tools, data, and perspective from two or more disciplines. It can also be said to be a body of specialized knowledge by which an attempt is made to improve basic understanding as to how to solve a problem in those areas where there could not be a solution

within the scope of a single discipline or single area of research.

**Who should conduct Interdisciplinary research?**

Interdisciplinary research should be conducted by the generalist and not a specialist, as he is aware of the broad domain and will have a reasonable approach towards the other fields as well. This will help to have any complex problem to be disintegrated into simple one, arrive at a solution, and then build blocks to achieve the complexity in an issue. According to Muller Merbach[9], interdisciplinary research cannot be placed in a strict jacket of a rigid formula; as one may find that problems are placed in a generic manner and are not ordered in the manner of whether it is scientific or non-scientific, physical, chemical, ethical, social, economic or legal problem. This is because the nature does not follow principles of categorization and therefore, there is a need that the scientific knowledge may be organized in different ways.

If we look at the problem-solving approach, say addition of two numbers, a mathematician will look at it as an addition of two integers with a modulus value whereas a management scholar will emphasize on the concept of synergy, which in physics is called as “entropy”. According to Miser[10], whenever any interdisciplinary research teams for a project is considered; they should be more a generalist. This is because a generalist will have a more open vision to accommodate the other disciplines and therefore, provide a logical solution. The history of scientific revolution in the 17th century evidences that researchers had not emphasized on a

[9] Heiner Müller-Merbach, *Interdisciplinarity in Operational Research -- In the Past and in the Future: An Invitation to IFORS '84 in Washington D.C."*, 35(2) THE JOURNAL OF THE OPERATIONAL RESEARCH SOCIETY 83-89 (1984).

[10] H. J. Miser, *Craft in operations research*, 40 (4) OPERATIONAL RESEARCH 633-639 (1992).

specific area of science and therefore, the results of their research were in the other areas like mining and military operations[11].

Kitty O. Locker[12] highlighted that the interdisciplinary methods enable us to answer different questions, study both hypotheses as well as the phenomena about which too little is known to formulate the hypotheses. If used concurrently, it provides triangulation. Those methods allow us with colleagues in more traditional disciplines who are also, increasingly doing interdisciplinary research. Locker's approach suggests emphasizing on looking at other disciplines to add value to a single discipline thereby justifying an old saying of one plus one not two but eleven. As a result, inter-disciplinarians are required to focus on a specific topic or set of questions that are too complicated for any single discipline to solve adequately[13]. Some inter-disciplinarians may be led by a desire to find a certain policy or technology that necessitates input from several disciplines; while others may look for clues, as to what a concept implies in different contexts[14].

## IV. Advantages of Interdisciplinary Research

Let us now focus on the key advantages of interdisciplinary research. While doing the research, the

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[11] Robert K. Merton, E. Mendelsohn, *The Celebration and Defense of Science*, 3(1) SCIENCE IN CONTEXT, 269-289. (1989).

[12] Kitty O. Locker, *The Challenge of Interdisciplinary Research*, 31 THE JOURNAL OF BUSINESS COMMUNICATION 137, (1994). An outstanding researcher Award recipient awarded by the Association of Business Communication in the year 1993

[13] KLIEN, JULIE THOMPSON ET AL., HANDBOOK OF THE UNDERGRADUATE CURRICULUM: A COMPREHENSIVE GUIDE TO PURPOSES, STRUCTURES, PRACTICES, AND CHANGE (Jerry G. Gaff et al. eds., 1996).

[14] Rick Szostak, *Defining "Interdisciplinary"*, UNIVERSITY OF ALBERTA, DEPARTMENT OF ECONOMICS, URL: https://sites.google.com/a/ualberta.ca/rick-szostak/research/about-interdisciplinarity/definitions/defining-interdisciplinary (Last Visited on 30 March 2022).

researcher's role is to focus with precision and clarity, as it also aids in the manner set forth hereinafter.

## 1. Preconceived notion

The Inter-disciplinary approach tries to uncover about the preconceived notions based on pre-existing ideas; which is already there with the researcher, however, with the advanced tool of learning, it provides an opportunity to question the researcher about the preconceived notion. Let us take an example of human being cleaning hands before performing any ritual. However, the scientific basis of cleaning hands is not to please the God but to kill the Germs. Therefore, it can be said that, as a part of learning process, the preconceived notions have taken a backseat, with the advent of technology. Moreover, when the interdisciplinary research is to be conducted, the researcher makes a best attempt to identify the cues and get an insight from different disciplines; helping the researcher to have a comprehensive understanding about an issue. Interdisciplinary approach helps researcher to seek cues or insights from variety of disciplines and formulate understanding about an issue, which is nothing but the subject matter of the research. Moreover, once it is an unbiased approach, it helps the researcher to synchronize concepts and ideas emanating from different disciplines to formulate concepts based on which the research designs, research problem as well as hypothesis is made leading to analytical observation about an issue. It is a well know saying, *"if you are wearing a hat you cannot learn about the facts"*. Therefore, researcher with an open mind will have the ability to adopt different methodologies, which ultimately leads to commuting understanding of the researcher about the subject matter of research. As far as the research is concerned, the role of the supervisor is very crucial as he can share and guide the

researcher on the issues and challenges based on his own experience to act as a guiding tool to the researcher in exploring issues. When the researcher is able to explore issues through the modus operandi in exploring the issues, he has learnt a route or direction to reach to the destination. This is nothing but the operant or significant learning.

## 2. Learning: classical- operant- cognitive learning

Interdisciplinary research helps the researcher to learn what the supervisor or the literature, which he or she has read, has told. In case of operant learning, the researcher operates himself taking different cues and ideas and formulates an issue but the learning does not stop there because the researcher has to reach the destination, which is possible only once the researcher develops cognitive abilities. The word "cognition" is an outcome of what we "perceive", which means what we see, read and try to understand the information goes in the brain and it is the mental process, which carries out the task. Allen Repko identified various cognitive attributes, which a human being possesses which fosters interdisciplinary learning through their cognitive abilities to acquire the relevant and prospective taking techniques[15] with capacity to understand multiple viewpoints on a given topic, so that, the researcher can appreciate the difference between various disciplines and decide on the approach to handle a problem. By this approach, the researcher develops a structural knowledge (based on the information available from the various sources) as well as the procedural knowledge (which is nothing, but a process-based information). Each of such knowledge is required to solve a complex problem. This will help the

[15] Repko Allen F., *How the Theories of Common Ground and Cognitive Interdisciplinary Are Informing the Debate on Interdisciplinary Integration*, 25 ISSUES IN INTEGRATIVE STUDIES 1-31 (2007).

researcher to integrate conflicting insights from different disciplines and develops an understanding to deal with a consolidated problem. Therefore, through this approach, researcher develops a clear understanding about the problem having its route in multiple disciplines, with a capacity to integrate ideas through interdisciplinary learning.

**3. Provide tolerance or embrace ambiguity**

Interdisciplinary approach assist academician in comprehending disagreements, which frequently occur regarding the causes and repercussions of a problem, as well as the best strategy to solve the problem. When learning is restricted to a viewpoint from particular discipline, ambiguity is viewed frequently as either a flaw in the analytical framework or indication that assumptions must be made in order to make a clear forecast. Therefore, it can be said that the ambiguity arises from differing viewpoints on issues posed by many disciplines, rather than being a flaw in one area, which results in a deeper understanding about intricacies of the problems of interest, as well as the obstacles to tackle them effectively.

**4. Guides researcher to appreciate ethical dimensions**

Interdisciplinary research through instructions help researcher to understand that, there are also ethical dimensions to the most issues of concern. Moral issues are included in ethical considerations, which implies that right versus wrong, good versus evil and justice versus injustice etc. It is also observed that many disciplines avoid subjective phenomena and confine their analysis to more objective factors in an effort to be merely scientific in nature. When investigating a problem, the interdisciplinary instructions encourage the integration of ideas from several fields,

including moral philosophy. As a result, ethical issues are frequently included in a multidisciplinary investigation of a problem. This is advantageous since the debate and evaluation of ethical aspects are likely to encompass a broad and diverse range of viewpoints on a topic as well as policy concern.

## 5. Promotes significant learning

Significant learning takes place as an outcome to the preconceived notions which means, when researcher develop a range of skills and insights and perceive it as meaningful it promotes in a significant learning. According to Fink[16], the common feature of an interdisciplinary research is, "how well a researcher has developed his foundational knowledge, i.e., acquisition of information along with understanding of ideas and applying them suitably with a view to acquire an understanding of how and when a particular skill is to be used with a view to integrate through the concepts and ideas.

Taking above into consideration, it can be said that the inter-disciplinary approach helps in acquiring the basic knowledge and it promotes the different ideas to be integrated as a starting point for a researcher to conduct research. Further, the interdisciplinary approach will be meaningless unless or until the researcher fixes the boundary limits within which the research is to be conducted. No doubt past experiences, skills as well as trial and error method, which are being commonly used may prove relevant for significant learning and it is with this basis, Fink[17] mentioned that interdisciplinary approach promotes understanding about the subject in a

[16] L. Dee Fink, Creating Significant Learning Experiences: An Integrated Approach to Designing College Courses, Revised and Updated (2013).
[17] *Ibid.*

heterogeneous way. As it is known that, multiple forms of intelligence contribute to the learning process as well.[18] If the researchers are from diverse background, interests, values, will provide a comprehensive approach to formulate an issue as discussed through various illustrations in the preceding headings.

One of the instance of interdisciplinary research through significant learning can be seen through the Supreme Court guidelines issued in *M.C. Mehta v. UOI*[19] to the Government of India to comply in all nine (9) refineries to reduce Sulphur and Nitrogen content by more than 99% to save the environment within a specified time frame; as this case pertains to the decolourisation of Taj Mahal. These provided researchers an opportunity from different disciplines to conduct interdisciplinary research for modification in the technology as well as to formulate a comprehensive legal framework for the technology supplier and the implementer to be successful. This was carried out by a starring committee, who through brainstorming, negotiation and finally through a pilot project, were able to provide a solution, which was techno-commercially viable. By this way, through interdisciplinary research with significant learning and developing pilot project as outcome of research; was completed and executed in nine refineries by the Government of India, and used the tools of interdisciplinary approach to learn, understand and implement the techniques of interdisciplinary research.

## V. Interdisciplinary: Global phenomenon

In the era of technology driven society, the interdisciplinary approach is growing in its leaps and bounds

[18] HOWARD GARDNER, THE THEORY OF MULTIPLE INTELLIGENCES (1983).
[19] M.C. Mehta (Taj Trapezium Matter) v. Union of India, (1997) 2 SCC 353.

to ensure that the outcome is effective both in terms of time and in terms of cost, leading to meaningful result. In this direction, the Indian New Education Policy (2020), there is a drastic shift from 1985 wherein it emphasised on research as a key focus area, along with encouraging joint project research between industry and academia. It recognises that the industry experts should be a part of the education team and the academicians should also visit the industry on how the learning and its implementation can take place in a synchronized manner so as to bridge the gap in a systematized manner by disseminating information and analyzing the existing setup through different eyes and arrive at a logical solution. The policy also supports the Government of India vision to make India as a hub for interdisciplinary research, which can be seen through the innovations, patenting and implementation of vaccine for COVID-19 patients as well as exemption for large scale testing and making vaccines to be used for emergency usage. This was only possible wherein the dept. of science and technology, medicine as well as the legal experts worked in a synchronized manner to provide coherent and timely solution; thereby helping the humanity through vaccination program.

## VI. Literature review and its analysis

Based on literature considered, it is found that interdisciplinary research provide better results as can be seen from below: -

L. C. Cheng & Ors. (2009) in their article, *advancing interdisciplinary research in the field of international business prospects, issues and challenges*, have discussed about issues and challenges in conducting interdisciplinary research in the area of international business.

This article provided a brief background on what constitutes interdisciplinary research and why interdisciplinary research should be pursued. It deals with research on international business by multinational enterprises being impacted by interdisciplinary research. The article suggests increasing local interaction with scholars from other disciplines instead of isolating in one discipline to expand the frontiers of knowledge in international business through adjoining discipline or field.

Also, LC Cheng & Ors. (2014) in their work, *advancing interdisciplinary research: insights from the JIBS special issue*, emphasized on the area of international business where the research is conducted through interdisciplinary approach.

Cheng described that the researchers who work on interdisciplinary model, do not have adequate knowledge of the other discipline, which they are conducting additionally on, and it is still the case that scholars having an academic background in a single social science discipline and are accustomed to developing and defending their arguments to peers from the same background. In addition, the reviewers who are confined to one discipline may not be able to appreciate the work done in interdisciplinary research. Finally, the article suggested encouraging more members of the community on interdisciplinary approach for better understanding and outcome of research.

Barkovic D (2010) started his work, *Challenges of Interdisciplinary research*, came out with a positive statement that, on an individual basis, the studies have shown that exposure to ideas outside one's own discipline, may have a positive impact on researchers in their own discipline.

Author attempted to define interdisciplinary research after referring various literature on the subject from the stage of evolution of interdisciplinary research globally by following analytical approach by connecting with elements of science in his research and advised researchers, research scholars, guides etc., on managing interdisciplinary research, encouraging interdisciplinary research as career, with emphasis on negotiating interdisciplinary collaborations as well as supervising interdisciplinary doctoral research. Finally, Author suggested that interdisciplinary research is something, which needs to be learned and acquired.

Campbell LM (2005) in her work, *Overcoming Obstacles to Interdisciplinary Research*, worked on problems with interdisciplinary research in two ends i.e., obstacles "at the academy" and understanding the "Other".

In her opinion, interdisciplinary approaches are critical for successful conversation and author finds such collaborations personally and professionally rewarding. However, the Author suggested that the researcher entering into interdisciplinary research must recognize potential obstacles from the outset, not the least of which are "obstructive misconceptions or prejudices [that social and natural scientists have] about each other. She also outlined some practical and philosophical obstacles to interdisciplinary research in general, offering illustrative examples from her own experiences and made some suggestions for overcoming them. While highlighting the problems in publishing, she opined that there might be some journals, which could just be focusing on publishing on a single discipline, which discourage the interdisciplinary researchers. She suggested that the time of the researcher has to be budgeted throughout the research cycle, but particularly near the beginning. Time is required to wrestle

with unfamiliar literature and to develop the collegiality, which can be critical to interdisciplinary success.

Shinn M (2006) in her work, *External, not Internal challenges to Interdisciplinary research*, drew on some personal experiences with interdisciplinary collaborations as a reply to Maton, Perkins and Saegert who stated internal challenges to interdisciplinary work groups.

The author expressed briefly that one should develop a more interdisciplinary identity for one's field and by doing so, while it could benefit community psychologists to flourish in psychology departments, it might also open up opportunities outside arts and sciences. She also shared one of her experiences where she was affected with the issue of funding for the interdisciplinary research as if some institutes are funding for the research and they wanted the topic to be narrowed down which made interdisciplinary research work impossible and led to an obligation to her freedom to work on the topic she intended to work on.

Based on the literature reviewed as well as the outcome from preceding sections it can be said that the interdisciplinary research is not only rewarding but also provide meaningful results but also challenging while conducting interdisciplinary research. Challenges in Interdisciplinary research are discussed in next section.

**VII. Inter disciplinary research: Challenges**

Based on the literature reviewed and problems faced, it is necessary to know the challenges faced by interdisciplinary research. Since the word inter-disciplinary is primarily concerned with, the research to be conducted between more than one discipline and therefore it is not an

easy exercise to conduct. Even, Kitty O. Locker[20] highlighted the following four reasons as to why interdisciplinary research is difficult to read as a domain:

1. Doing interdisciplinary research requires more time and effort than research on a narrowly defined discipline;
2. There is a tendency to disagree about what kind of data is relevant, what kind of analysis is convincing, and indeed what research questions are important. Researcher's aim is not what has happened but to point out what is expected to happen and if it so happens, what are the remedial measures;
3. When we import concepts or apply methods from other fields, we are more likely to make conceptual and methodological mistakes; and
4. Interdisciplinary research is less likely to be cumulative.

   Locker mentions that, the above challenges are those, which if not taken care in their true perspective, will affect the hypothesis on which the research article is relying. As interdisciplinary research is time-consuming, the researcher has to start with a methodical understanding of the theoretical and epistemological basis of a field for comprehending background knowledge, which may have no specific credence in academia[21].

When a researcher chooses to enter a new domain, his work in negotiating its terms "counts" only when he finally publishes the project. Some of the challenges are depicted out herein below –

[20] See *Supra* note *13.*
[21] See *Supra* note 8.

a. **Vision:** The element of coherence is very essential in an inter-disciplinary research. This means, the researcher for the same project should have a vision and clarity about the outcome of the research conducted.

Let us take the case of Standard Essential Patent (SEP) wherein both the telecom expert and IPR expert think from two different perspectives; which is a welcome step but the vision of interdisciplinary research should be, as to how the technology should reach to a common man. In other words, the standard setting organizations (SSO), which recognizes and grant SEP must ensure the viability of a technology has to be best suited to end users and it is expected that the legal experts to emphasise that the technology licensed must be on FRAND terms i.e., free and non-discriminatory. This means that the emphasis should be to create a technology useful for public at large with owner of the intellectual property should get royalty for the product created and the legal researcher must ensure that the agreement between the licensor and the licensee (product manufacturer) should be just, fair, and reasonable to both parties. This vision will make the research effective and properly implementable.

b. **Communication:** The domain of inter-disciplinary research requires more of a generalist approach so that communication between the two disciplines informing the themes and outcomes is understood and communicated in the same sense, which helps in division of responsibilities and thereby yielding synergic results.

c. **Complexity:** As the technology advances, it involves complex processes and their interpretation. However, there is no shortcut to dealing with such complexities. The role of the researcher is to ensure and simplify a complex problem into a simple one so that the other discipline understands the same. Many-a-times, researchers take up interdisciplinary research projects without having the basic knowledge, without which any meaningful research cannot be conducted. However, if basic knowledge is there but the knowledge required to initiate the research is missing, in such cases literature available on the subject and finding out gaps in the literature, helps in developing a research problem. However, once the research problem is formulated, it is to be ensured that each discipline must contribute in the research and finally, if it is techno-legal research, the outcomes are integrated/ synthesized to suggest both theoretical and applied findings, to have meaningful result.

d. **Expensive:** If the vision of research, including the communication as well as the gaps in the minds of different disciplines is not clear, it will lead to non-clarity in the beginning and once both disciplines look at a problem like a frog's eye and not of human beings', it increases complexity, delays and thereby has an implication on cost of research making it expensive. However, if steps are taken *apriori* (i.e. at the contemplation stage), the outcome will be less costly and more beneficial to the society.

## VIII. Role of supervisor in inter-disciplinary research

Interdisciplinary research provides an opportunity for supervisors to guide researchers to conduct their research in

a most optimal manner and once the supervisor understands the concepts and explains the same with the researcher; it is a great professional service with objectives for researcher to reach destination. Most educators are familiar with the methodology and empirical practices of related disciplines, therefore gaining requisite cross-disciplinary expertise to become an interdisciplinary supervisor will not be time consuming or stressful. This means that the supervisor understands one dimension and can collate with other disciplines in a similar manner to ensure that the research's core objectives are understood coherently from the perspectives of various disciplines, allowing the researcher to identify gaps between the two disciplines.

One model commonly used in research is task modelling which is an instructional strategy that promotes learning through observation. It is quintessentially fundamental to interdisciplinary research as most researchers are unfamiliar with interdisciplinary approaches to learning, and therefore, researchers are not required to learn an entirely new form of tool or pedagogy. The role of a supervisor is to guide the researcher(s) in facilitating understanding on the tools required in exploring through suitable software or on the probabilistic outcome of the research, while justifying the hypothesis. Then it comes to link or synthesis, i.e., the cue or insights from different disciplines. This is one of the most demanding elements of interdisciplinary research and can primarily be understood as an activity which most of the supervisors have carried out in the past and therefore, can provide better inputs to the researcher(s) with modest efforts. Interdisciplinary approach encourages the researchers to see and examine the role of other disciplines while conducting the interdisciplinary research and its openness in order to expect the probable outcomes. It is essential to note that the supervisor helps the

research team to determine the outcome of interdisciplinary analysis, as he shares his experience in the nature of the course he is leading. Finally, it can be said that interdisciplinary research is a mode of research integrates concepts, and/ or theories, based on information, data, tools, techniques, perspectives from two or more disciplines or bodies of specialized knowledge to advance fundamental understanding or to solve those issues or problems; whose solutions cannot be envisaged in a single discipline or which is beyond the scope or area of single research practice.

## IX. India's efforts in interdisciplinary Research: Current initiatives in 2022

a. **India and Germany[22]:** India and Germany created a combined innovative research hub for promotion of interdisciplinary research through a joint research program called International Research Training Groups (IRTGS), with an aim to help researchers to develop their research capabilities and research carriers with ultimate objective of providing optimal solution by using innovative technologies, with cost effective, durable products for its consumers. The Government of India through the Department of Science and Technology and the German Research Foundation (DRG), will provide funding to this training group. This is a great initiative by respective government to take step forward and have futuristic outlook in a global prospective.

b. **India and Denmark**: Alternative fuel as a source of energy is need of the hour and in this direction, large

[22] DST DFG JOINT CALL ON INTERNATIONAL RESEARCH TRAINING GROUPS (IRTG) 2022, DEPARTMENT OF SCIENCE & TECHNOLOGY, (30 March 2022), https://dst.gov.in/callforproposals/dst-dfg-joint-call-international-research-training-groups-irtg-2022.

number of researches is ongoing on Green fuels including Green hydrogen[23] for environment safety. For this purpose, Government of India and Danish Government are working together with a view to create through research and innovation for development of new technologies including the solutions available as well as the best business model pertaining to green fuel for transportation and industry utilization. Green hydrogen drastically reduces the transport and industrial sector fuel emission and pollutants and is highly cost effective, as there is no dearth of input source i.e., water. In this direction, Department of Science and Technology Government of India and Innovation Fund Denmark (IFD) are calling for researchers to conduct interdisciplinary research and innovation mainly in these two sectors so that, a standardized technology with automation of production process including storage and distribution of fuel complying with the environmental laws is available as alternative fuel[24].

c. **India and BRICS:** India and BRICS are also working on interdisciplinary and multi-disciplinary projects with a view to facilitate projects between researchers and institutions to have innovative research. The broad areas

[23] Green fuel is nothing but an outcome of biomass, for which, the input costs is negligible, however, to have a green fuel, with a minimal environmental pollutant, best technologies are required from both technology point of view as well as from environmental aspect. Similarly, in case of green hydrogen, the emphasis is, on the process of converting water into hydrogen and oxygen through a process of electrolysis for which different types of electrolytic cells are already available in the market and the green hydrogen will be much cheaper than out hydrocarbon fuels like petrol, diesel and gasoline etc.,

[24] Joint Call for project proposals 2022, Indo-Danish research and innovation cooperation in the area of "Green fuels including hydrogen, Department of Science & Technology, (Mar. 30, 2022, 8.42 PM), https://dst.gov.in/callforproposals/joint-call-project-proposals-2022-indo-danish-research-and-innovation-cooperation.

of research being Biotechnology antimicrobial resistance technologies for diagnosis and treatment with simulation including problem solving, climate change issues, with the objective to conduct collaborative, holistic research with researchers from different disciplines and formulate a comprehensive research problem for its analysis through cognitive learning so that, the output products suits or helps the mankind. However, it may be worth to note that India and China are the biggest markets in the world for its consumption and therefore the global level research makes the scientist aware about the last minute development on the subject[25].

## X. Epilogue

Looking at the issues and challenges with an understanding by the Indian Government to emphasize on interdisciplinary approach with Germany, Denmark and BRICS nations as well as other countries, India's emphasis on collaborative interdisciplinary approach, will ensure that India comes out with good research solutions for the betterment of human life and environment. Technology fusion as a means to achieve a truly enriching interdisciplinary approach is gaining pace. Therefore, by sparking off comprehensive assimilation of different disciplines, the policy maker(s) should also formulate law, rules and regulations so that innovations comes from research lab to market place and not in litigation. It is therefore need of the hour to look research not in insolation as single discipline but to collate with other disciplines to come with meaningful applicable results. This is evidently a

[25] BRICS STI Framework Programme, 5th coordinated call for BRICS multilateral Projects 2021, DEPARTMENT OF SCIENCE & TECHNOLOGY, (30 March 2022), https://dst.gov.in/callforproposals/seeking-full-proposals-under-5th-brics-call-shortlisted-project-investigators-2nd.

major success story of interdisciplinary approach as a way forward in the current day context using the pointers mentioned in the body of this article.

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19. Repko A, *How the Theories of Common Ground and Cognitive Interdisciplinary Are Informing the Debate on Interdisciplinary Integration*, 25 ISSUES IN INTEGRATIVE STUDIES 1-31 (2007).

20. Repko A, *Interdisciplinary Research: Process and Theory* (Sage Publications 2017).

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## Chapter - 6

# SOCIO LEGAL RESEARCH

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## I. Exploring the Relevance Empirical Legal Studies in Legal Research

When we talk about law, there are various perspectives that can be taken. Here, we are concerned with law as a discipline. For long, law has treated itself in isolation, without the 'baggage' of social sciences. When the lawyers and judges meet in the court room, they use the 'ivory tower approach' and remain cut off from the world beyond the courtroom- in the sense that they are not much concerned about the impact of court proceedings and court decisions on laymen/ clients who are involved in various cases. They are happy and complacent to be aloof from the rest of the world in favour of their professional pursuits. In order to overcome this ivory tower approach in law, an interdisciplinary or multidisciplinary strategy is required.

## II. Isolated approach vs interdisciplinary approach of law

The isolated approach begins in the institutional learning when law students indulging in graduate courses are taught and groomed to treat law in isolation from its social context. The law students are taught via the case law methods- thus they learn about laws in cases, before

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applying them to new set of factual scenario. They are thus trained to learn with reference to prior laws and usually are not asked to indulge in understanding the original conception or the end- point of law. They are not encouraged to view law in wider perspective of society. Even where the sociological or socio- legal view is taken, the understanding of law in social context is very limited and superficial.

In the area of legal education, some educational institutions do take the wider interdisciplinary perspective and prompt the scholars and students to study law as a social science. They encourage the scholars and students to view law as a tool to structure society, as a means of bringing social transformation and serve needs of people. They take the stand that study of law should include how society is structured, why it is structured and how it came to be structured in a particular way. Contrary to this, if law is regarded as a social science, the legal professionals can learn to fight against corruption, they can learn to fight against unethical laws and institutions. They can bring major social reforms based on principles of justice, fairness and needs of society.

However, most of the law schools/ institutions dismiss the idea of teaching law as a social science – even where social sciences are taught to law students, they are taught as optional electives, or as papers that are given less importance. Even the law firms insist that lawyers should be narrowly trained in the technical, vocational skills of the legal profession, and not about the broader critical ideas surrounding law.

The other pertinent issue that is reflected here is the use of research methods by the scholars in the context of law- the conventional methods that have been used seem to be

outdated and incomplete, keeping in mind that the ivory tower route is insufficient and needs an alternative approach. In fact, the methods explicitly referred by the law researchers are not noticeable by scholars of other social sciences outside the legal academia. Even the methodology used is non-reflective and the scholars would find it difficult to legitimize or validate their research procedures.

This baffling situation of methodological deficit can be overcome by relating law to society and peoples' lives. It calls for the general reflection in the rich and variegated field of socio- legal studies (SLS). SLS adopts a legal realism approach and is characterized by wide range of methods, data analysis techniques and areas of study. The empirical methods of research have been used by legal scholars as an alternative to study law and legal institutions.

**III. Origin and need for Empirical Legal Studies**

Origin of empirical research in law can be traced in movement of legal realism, which is a naturalist philosophy of law. Legal realism takes the perspective that jurisprudence should imitate the methodologies of natural sciences and should rely upon the empirical evidence.

The empiricist approach used in legal research does not bring out new kind of research- rather it brings together and consolidates empirical research relevant to law that was being conducted in social sciences. The use of Empirical Legal Studies (ELS) leads to elevation of the academic status of law schools, with considerable educational advantage and policy influence. As these elite law schools offer an element of ELS in their curriculum, they distinguish themselves from other traditionally oriented institutions and offer an appeal to the corporate and commercial world that indulges in data

– driven law suits and practices. However, ELS tends to be relatively more labour intensive, and therefore expensive- hence it is pursued in the institutions that are considered to be elite and have funds to fuel the empirical research.

The first research under ELS was developed in 1960s to offer an alternative methodology to doctrinal research, to study the legal issues. Some important names of the first scholars associated with ELS are Brian Abel- Smith and Robert Stevens[1]. Ever since their work, more and more empirical studies have been conducted in the area of legal research, especially in the context of criminal justice system.

The bridge between social sciences and legal studies was built gradually. Until 1970s the social scientists were primarily viewed as technicians who could provide answers to problems posed by legal scholars and policy makers[2]. This approach remained highly significant in area of SLS, which was characterized by wide range of methods, data analysis techniques and areas of study[3]. The vitality of SL scholarship is indicated in the prolific writings that came up encompassing theoretical approaches, research methods and substantive concerns about the place of law in social, political, economic and cultural life. These writings found their place in numerous law and social science journals, as well of periodicals concerned with interaction between law and society. There was proliferation of book series on the socio- legal themes and SL research networks and centers.

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1 http://www.ucl.ac.uk/laws/genn/empirical/consultation/index.shtml?chpt2

2 Abel, Richard L, *The Professional is Political*, INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION 11 1-2 (2004): 131- 156 DOI: 10.1080/0969595042000317523

3 GENN, H., M. PARINGTON AND S. WHEELER, LAW IN THE REAL WORLD (Nuffield Foundation, London 2006)

SLS has now become an important dimension of the mainstream legal education, with many academic departments adopting the SL approach. It is reported that SL reasoning has affected the courts in England and Wales[4]- the higher courts show inclination to use sources external to law and engage in purposive reasoning. It can be stated that SLS is now sufficiently established internationally as a field of inquiry that critically examines the social context law. This examination is important for the socio- legal scholars, as well as to the expanding number of students, researchers and policymakers in context of law and other fields. The examination of the 'socio' poses fresh challenges in the face of the rapid changes that are occurring due to consumerism, globalization or neo-liberalism[5].

Once the scholars realized that law can be studied using the non- doctrinal, empirical ways, a rich variety of perspectives and methods found their way in legal research. It became important in law because there are important questions that can't be answered using the conventional doctrinal method of analysis. Both ELS and Doctrinal Legal Research (DLR), however, offer assistance to the persons who take normative decisions about what to do. Thus, the two approaches in law can be taken as interrelated and interdependent[6].

[4] Samuels, H, *An uneasy alliance? The relationship between feminist legal studies and gender, sexuality and law*, FEMINIST LEGAL STUDIES 17: 297 (2009).

[5] Feeman, Dermont, *Exploring the 'Socio' of Socio- Legal Studies*, URL: https://link.springer.com/chapter/10.1007/978-1-137-31463-5_1 (Last Visited on 7 October, 2022)

[6] Dagan, F. R. R. Kreitner & T. Kricheli-Katz, *Legal Theory for Legal Empiricists*, LAW & SOCIAL INQUIRY 292 43 (2) (2018)

## IV. What is empirical research and what role does it play in law?

The ELS has been often welcomed by the doctrinal academic lawyers as a potential source of data that strengthens their normative arguments- rather it can be said that ELS and DLR exist alongside. The two pursue different paths- DLR concerns itself with the question what is law, the coherence of law and the values expressed by it. Doctrinal lawyers indulge in normative comment on their findings and often suggest consequences of law in practice. ELS on the other hand talks about where does law and practice of legal systems come from, which actors and institutions and social factors cause laws to exist, and what effects do they have. It corresponds to how individuals and institutions and society respond to and is affected by laws, and how these laws are used by different actors.

Empiricism under ELS involves the consideration that the only source of knowledge is first- hand experience. The empiricists use inductive methods of conducting research by observing relationship between two or more aspects or components of a case, and replicate the study in various cases- they do not start with any assumptions or general principles, and deduce their information from that. They draw a general theory from this study and hold it to be true unless it is falsified by other studies.

Empirical research in law involves the study of legal institutions, rules, procedures and personnel of law using direct methods, with the view of understanding how they function and what effects do they have. There has been a trend of expanding the empirical research in American and

European law schools[7]. This has led to a competition between ELS and the traditional DLR. As ELS is absorbed in discipline of law, the empirical methods of social sciences may undergo changes so as to adapt itself to the environment of law. More and more qualitative methods are being used in the research and it is tuning itself to the theoretical models of legal frameworks than that of social sciences.

ELS can be used in all areas of law, but particularly it has been widely used in studies of company law, family law, criminal justice and torts law. These areas are more accessible to non- lawyers and are interesting in their own way. For instance, family issues or crime in society are core areas in sociology, hence many sociological studies have been conducted in these areas. Number of government departments also takes up empirical studies. For example, the study on UK Public department has been conducted Simon Halliday using the empirical research[8].

The findings of ELS have been useful for policy makers, judiciary and lawyers. The study conducted by Varsha Aithala on Indian judiciary is illustrative of how the issue of justice delayed in Indian context was conducted making extensive use of empirical research methods[9]. Similarly, study conducted on functioning of legal aid cells in various universities/ law schools made use of doctrinal as well as empirical research. Here, empirical research involved

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7 E. Chambliss, *When Do Facts Persuade – Some Thoughts on the Market for Empirical Legal Studies*, 71 LAW AND CONTEMPORARY PROBLEMS 17 (2008).

8 Halliday, Simon, *The Role of Empirical Legal Research in the Study of UK Public Law* (2011). https://www.researchgate.net/publication/228236945_The_Role_of_Empirical_Legal_Research_in_the_Study_of_UK_Public_Law (Last Visited on 10 October 2022).

9 Aithala, Varsha, Rathan Sudheer and Nandana Sengupta, *Justice Delayed: a District wise Empirical Study on Indian Judiciary*, JOURNAL OF INDIAN LAW AND SOCIETY 12(1) (Mansoon, 2021).

visits to various law schools and functional aid cells, and interactions with various advocates[10].

Taking the study to ELS level would mean, for example, analyzing family law as it impacts women, or the related issues such as domestic violence in general, or dowry issues in India. Here, domestic violence has been studied by sociologists from the perspective of how legal remedies are available to the victims and what happens to the victims once they are reinstated in their matrimonial home after court orders. Also, studies have been conducted on domestic violence from the angle of perpetrators – unless we conduct such a study, we will not know why perpetrators indulge in domestic violence and what needs to be need to stop domestic violence. So, before we move to the impact analysis of domestic violence on the victims and affect to law related to the same, we need to go into the causes of domestic violence. Such an approach cannot be taken in the area of pure law- using the DLR one may simply go into the analysis of legal principles applied in the law. Empirical research provides valid answers and solutions to these issues.

Another illustration can be of sociological studies of juvenile delinquency, which revealed the pattern of deviance among the adolescents and how it moves along the age graph. With the adolescent spurt, the rate at which the juveniles indulge in criminal acts increases up to certain age and then it declines. The various theoretical models used by the sociologists have also revealed the sub- culture associated with juvenile delinquency. The implication of sociological studies on juvenile delinquency has been

[10] Singh, Kanwal D P, *Analysis of Functioning of Legal Aid Cells in Various Law Schools/ University Departments/ Private Universities*, REPORT ON ACTION TAKEN PROJECT, submitted to Department of Justice, Ministry of Law and Justice (2019). https://doj.gov.in/sites/default/files/final%20report.pdf

profound on the juvenile justice system- the International Convention on Juvenile Justice relied on the premise that the approach to handle juvenile delinquency ought to focus on preventive methods rather than corrective measures. Thus, juvenile justice laws need to be different.

ELS is taken up by different people/ groups- in the US and UK, ELS is taken up seriously, as in comparison to India. There may be research centers or bodies that take up the empirical studies, and may involve lawyers, social scientists and research staff from other disciplines to conduct research or prepare research designs for them. To illustrate, the Oxford Center for Socio- Legal Studies has conducted path-breaking empirical research in the area of torts law and compensation for personal injury, the financial implications of divorce and resolution of family disputes and business disputes[11].

ELS can be used to investigate role of legislations, regulations, legal policies and other legal arrangements at play in society[12]. The multidisciplinary research involved in ELS that covers history, evidence, methods, growth of knowledge and links with normativity, and provides valuable insight about law. ELS can be conducted by individual scholars or group of researchers working together. It is a valuable tool for students, legal scholars and practitioners[13]. Undergraduate and post graduate students can take up the studies, but cost factor involved in empirical studies discourages them- often it involves significant costs on data

[11] http://www.ucl.ac.uk/laws/genns/empirical/consultation/index.shtml?chpt 2

[12] LEEUW, FRANS L. AND HANS SCHMEETS, EMPIRICAL LEGAL RESEARCH: A GUIDANCE BOOK FOR LAWYERS, LEGISLATORS AND REGULATORS (Edward Elgar Publishing Ltd 2016).

[13] There are blogs on ELS which provide information on how to conduct empirical research, about the news associated with it and about, funding, training and publications.: Current awareness and News, *Empirical Legal Studies Blog*.

collection and analysis. Ph.D. scholars and post doctorate fellows who have access to funding agencies take the initiative of conducting empirical research.

ELS is also important part of legal education- it has been increasingly used for educating law students and legal professionals. More and more faculties in law departments and institutions are undertaking and encouraging their students and scholars to take up empirical research. They also offer courses for professionals which explain importance of empirical research and how it can be used for their work. This provides more in- depth and better understanding of how law functions in society. Some of the law institutions have separate centers for training in empirical legal research, and specific departments. For instance, Harvard Law School has Harvard Empirical Legal Studies Series, a graduate program that explores range of empirical methods (qualitative as well as quantitative), and their application in legal scholarship in various fields of law. It is platform for engaging with current empirical research, provide resources for designing, constructing and analyzing an empirical study and for developing ideas and empirical projects[14]. Similarly, Stanford Law School imparts program on Empirical Legal Studies: Research Design that is involved in sophisticated statistical analysis of quantitative data[15]. In India, National Law University Delhi offers course on empirical methods in Legal Research from time to time. The university took initiative in conducting national and international workshops under its Theodore Eisenberg Center for Empirical Legal Research[16].

[14] https://hls.harvard.edu/dept/graduate-program/harvard-empirical-legal-studies-series/
[15] https://law.stanford.edu/courses/research-design-for-empirical-legal-studies/
[16] https://nludelhi.ac.in/UploadedImages/b1b4cdd4-5eab-4936-8bbf-a88d501c7790.pdf

## V. Methods Used Under Empirical Legal Research

Empirical research involves studies based on observation and measurement of phenomena, as directly experienced by the researcher. The data thus gathered may be compared against a theory or hypothesis, but the results are still based on real life experience. Both quantitative and qualitative methods can be used for conducting research in pertinent areas of law. Both the methods are important and have their own advantages, and combination of both the methods gives very useful results.

### A. Quantitative Research

Quantitative research is deductive and involves collection of factual information that can be quantified or measured- it deals in numbers, logic and objective stance. The data can further be analysed by using statistical tools. It provides the researcher with an objective understanding of the phenomenon. It is usually conducted in a highly controlled setting and allows the reality to be studied objectively. Quantitative research designs can be experimental, quasi- experimental, correlational or descriptive. Questionnaires and schedules are also used as quantitative research tools.

The experimental research method calls for an investigation of the cause and effect relationship under controlled conditions. Typically, researchers conduct experiments to test hypotheses or the unverified statements of a relationship between variables. The experimental method of study can be used in social sciences in a restricted sense, but it can be used with certain innovations- the investigator can create laboratory like conditions in the social environment by controlling certain variables. Usually when

the experimental method is employed, only small group of people are brought to the laboratory setting, who usually know that they are being studied, and thus they may behave in unnatural manner. The experimental method was used in the Stanford County Prison study, where an experiment was conducted by Philip Zimbardo[17]. The study supported the notion that the character of prison itself, and not the personalities of prisoners and guards, causes prison violence.

Quasi experimental method resembles experimental method but is not true experimental research. It involves the manipulation of independent variables, but here the respondents are not randomly assigned to conditions. This method can be used in field settings where random assignment is difficult or impossible. It aims to demonstrate causality between intervention and outcome, hence it is often used to evaluate the efficacy of a treatment or an intervention program.

Correlational research is a type of non- experimental research where the investigator focusses on establishing relationship between variables, but does not attempt to influence them. The relationships between the variables are assessed statistically and presented through the scatterplot diagrams. The scatterplot diagrams provide information positive (correlation) or negative (no connection) relationship between the variables of the study. They also provide indication of the magnitude or strength of the correlation.

Descriptive research involves research methods that enumerate the characteristics of a population or phenomena

[17] Haney, C., W. C. Banks, & P. G. Zimbardo, *A study of prisoners and guards in a simulated prison*, *NAVAL RESEARCH REVIEW* 30: 4-17 (1973).

being studied- it focuses on the question of 'what' rather than 'why'. It primarily focuses on describing nature of a demographic segment, without considering the why of the phenomenon. It attempts to collect quantifiable information for statistical analysis of the population sample. It is generally a cross- sectional study, where different sections belonging to the same group are studied. Distinctive methods used under descriptive research are observational, case study and survey research. Observation and case study methods are used under qualitative research also- but quantitative observation and case study methods involve measurement or numbers, which is missing in qualitative observation and case study.

Survey method involves conducting survey, which is a form of planned data collection in a given situation, problem or population. The social survey is undertaken in a definite geographic area and is confined to the study of immediate problems of society such as poverty, unemployment, delinquency, crime etc. The main aim of social survey is to prepare constructive program of social research or removal of immediate evils. In other cases, the facts collected from the survey may be used as the basis for further social research on the matter. A sociologist generally resorts to survey method to collect quantitative data in relatively less time.

Questionnaire refers to an organized set of questions that are developed to gain specific information from the respondents. The questionnaire can be mailed to the respondent; thus, the investigator need not be present at the site when the respondent fills in the form. Thus, this tool can be used to cover larger areas within limited period of time, and can also cover wide range of projects, both to initiate a formal inquiry and to supplement and check data previously accumulated.

Questionnaire can be used as a good tool to measure variables such as age, sex, height, weight, education, occupation, income, political affiliation, religious preferences, group membership, food habits etc. A measurement of these features helps the investigator to draw conclusions about broader and somewhat abstract concepts like social distance, attitude, perception about different things, degree of social prejudice etc.

Schedule is a printed list of questions addressed to the respondents, but administered/ filled by the investigator (it involves face- to- face interaction between the researcher and the respondents). It is very useful in small and less scattered areas that are small and less scattered, where the investigator can contact his respondents personally and hence, he can put his questions directly to the people. Since the schedule is directly administered by the investigator, the authenticity of this research device increases over the questionnaire. It is helpful in areas which are very sensitive and personal and the respondent may not like to disclose any related information if the questions are put through mailed questionnaire. Thus, we can say that schedule gives deeper information to the investigator and it has many advantages over questionnaire.

**B. Qualitative Research**

In contrast to the quantitative research, qualitative research is based on inductive method of collecting the verbal information about certain phenomena that cannot be measured or quantified. The data gathered is interpreted in subjective manner, with the primary objective of arriving at a complete, detailed description of the phenomena under study. It is used for interpreting cultural and historical phenomena and for advancing theories. The qualitative

methods involve multiple realities and perspectives in a given situation being studied- the reality of the researchers, the individuals being investigated and the reader/ audience interpreting the results. There occurs a close interaction between the researcher and the subjects/ respondents under the study and efforts are made to minimize the distance between the two. The qualitative research involves case study methods, ethnographic methods and the phenomenological studies.

Case study refers to a complete and detailed analysis of a social phenomenon. Through this method, the researcher can give a holistic account of an event and provides a detailed contextual analysis of a limited number of events and their relationships. In this method, the researcher explores a single entity or phenomenon ('the case') bounded by time and activity (e.g., a program, event, institution, or social group) and collects detailed information through a variety of data collection procedures over a sustained period of time. As a qualitative method, it has helped the researchers in examining the contemporary real-life situations and provides the basis for extension of ideas.

The case study method has been used to maintain case histories, or detailed account of a person or an event, in schools, prisons, mental clinics, military forces, or by physicians, psychologists, social workers, lawyers etc. The tool has been adopted in legal studies through social sciences, where a case is considered as an event or a set of events. The legal practitioner studies all details related to his case and find theories and practices applicable to his case.

Ethnographic research involves the study of a cultural group in a natural setting over a specific period of time, with purpose of producing a narrative account of that particular

culture, against a theoretical background. A cultural group can be any group of individuals who share a common social experience, location, or other social characteristic of interest. The ethnographic study could range from observation of rape victims in crisis shelters, to children in foster care, or a study of a cultural group in any part of the world. It involves exploratory and longitudinal study and aims at collecting an in- depth and rich experience over a relatively small area. This is why ethnographic method is sometimes known as thick description.

The researcher collects the data on iterative basis, by taking up a 'reflexive role'- reflecting, building up a theory and then going back to the field and testing it. Usually the ethnographic research makes considerable use of participant observation (ideally speaking)[18], triangulating it with interview and / or informal conversation.

In Phenomenological studies, the researcher examines human experiences through the detailed description of the people being studied, with the objective of understanding the 'lived experience' of the individuals being studied. This approach involves researching a small group of people intensively over a long period of time, and focusses on phenomena that have impacted people under study. This approach highlights the specifics and identifies a phenomenon as perceived by an individual in a given situation. Here, the researcher tries to study the subject's experiences related to the phenomena under study and also focuses on the factors that have influenced the experience of the phenomena. The researcher can use observation, art and documents to construct universal meaning of experiences as

[18] Often structured observation method is used as a practical approach to field, that allows the researcher to be somewhat detached, but more systematic.

they establish understanding of the phenomena. The rich information gathered through phenomenological study provides scope for further inquiries.

**Fieldwork:** The ethnographic and phenomenological studies often involve fieldwork, which is a very enriching experience and it gives best results in social science study, as here the investigator is able to get first- hand information about the society/ community under study[19]. In natural sciences, the investigator makes a study of the phenomena in laboratory settings and this forms his data, which is further analysed for reaching conclusions. In social sciences, the investigator chooses a community of people living in certain physical area to collect the relevant information required for his study. He makes direct observation of the people in their natural settings- the data thus collected through observation and interviewing people form the data for the investigator. The investigator collects the facts from the people, thereby relying upon first- hand data gathered from the field. The facts collected through direct observation become the evidences which support the investigator's hypothesis and he is able to reach his analysis. Sociologists have also started using the fieldwork method to collect their data[20].

Fieldwork is thus an inter- subjective experience, where both the investigator and the object of study are under constant

[19] Genesis of fieldwork method has been in anthropology. In anthropology, the method of fieldwork is very important because, the investigator cannot rely simply on the facts collected by other people- he cannot believe in anything or any phenomena without actually observing the natural field situation.

[20] However, the investigator cannot control the situations in the field, and cannot bring perfect objectivity in his study either, as both the investigator and the individuals being investigated are human beings, and human beings cannot be subject to full control. It has been observed that the gender of the investigator, his socio- economic background, his own personality and his academic training moulds his thinking and analysis of the facts, reducing the objectivity in his study.

gaze of each other[21]. If a similar study is carried out by a different fieldworker, probably the results of the study would be different, as in each case, the fieldworker will depend upon his senses in the field- he observes people and questions them on important issues. This means that if the same data is collected by two different researchers, their interpretations of the facts collected from the field may be different, hence this analysis will also be different[22].

**Observation:** Observation may be referred to as a method of data collection which involves accurate watching and noting of phenomena as they occur with regard to cause and effect, or mutual relations. Scientific observation is always very systematic, planned and categorical in providing information. It tends to establish relationship between events. Through such organized observation, the investigator is able to understand the cause underlying these events. It provides evidence of facts for supporting or rejecting certain hypothesis. The method may seem to be very simple, but structured observation can provide richest data. Sociology and anthropology depend upon observation as the basic tool of data collection because it facilitates the observer with direct understanding of the social phenomena that he intends to study[23].

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21 LAVENDA, ROBERT H. AND EMILY A. SCHULTZ, CULTURAL ANTHROPOLOGY: A PERSPECTIVE ON HUMAN CONDITION (Oxford University Press 2013)

22 In field research, the people being studied are not like the objects of study under natural sciences- they have their own feelings and views, and are capable of reacting in their own manner. The people under study are quite capable of maneuvering their actions and replies, thus depriving the investigator of the true picture.

23 Observation may be or participant, non- participant and quasi- participant type, which underline varying degree of involvement of the investigator/ observer with the people being studied. Ideally speaking participant observation provides best data, but quasi- participant observation provides a mid-path between participant and non- participant observation, where the investigator can easily play the roles of both observer and participator in a simple way.

Observation is the most basic and simple tool of data collection used by a sociologist and provides a rich experience to the researcher. It should be systematically planned, such that all the steps involved in observation should be clearly spelt out. Planning of observation consists of deciding the area for collecting data, the setting of observation and the process of observation that is to be used by the researcher. The work of William Whyte on 'Street Corner Society' used participant observation, where he lived among the street gangs to understand how these gangs operate[24].

**Interview:** If observation refers to watching people perform their routine activities in a purposeful manner, interview refers to talking to people in a purposive and more systematic/ formal way than our day- to- day conversation. It may be regarded as a process in which the researcher tries to penetrate deep insight into the imagination of his respondent's circumstances. An interview always aims at a discovery or a breakthrough in a new area of knowledge, new consciousness or new insight in an unexplored area. It helps in the identification of new variables and in sharpening our conceptual understanding. It gives something more to the investigator than statistical descriptions achieved through mail surveys. In a face- to- face interview, the interviewer can get both qualitative and quantitative information about his informants[25].

Though observation is regarded as superior over interview, the latter method becomes almost indispensable

[24] WILLIAM WHYTE, STREET CORNER SOCIETY: THE SOCIAL STRUCTURE OF AN ITALIAN SLUM (The University of Chicago Press 1993)

[25] By observing the respondents behave or react in a particular manner, the interviewer can get an additional description of the people, how they feel and why do they feel or behave in a particular manner.

where data is not available for observation. For instance, when the researcher wants to reconstruct the past events or explore the relationships of his respondent with other group, he has to use interview technique[26].

## VI. How empirical research methods have been used in legal research?

Use of Social Science research methods in ELS is not a new trend in Law. The empirical research has been used in law and legal studies have been used for ages to produce commendable results in areas of operative and functional aspects of law and their effects. There has been an increasing trend of use of empirical research methods based upon hypothesis testing and asking research questions, which is no less than a revolution in the area of law.

In the United States, the increasing use of empirical research methods to study law in its operative and functional domain is greatly related to the movements around legal realism that grew around 1930s and 1940s. It brought a revolution in itself by introducing use of interdisciplinary research methods, mainly borrowed from social sciences. These methods were required to analyse the role of social background and political convictions of the judges (and not just of the application of laws, precedents and general principles of law) on their verdicts. Legal realism thus prepared a backdrop for acceptance of social science research methods and set a trailblazer of empirical research in legal studies. Today, empirical research is being used not only in US but in other countries also, and has a wide forum

[26] *Interview can be of various types. Structured Interview is the type of interview that is based on structured set of questions, and thus it is highly standardized in its form or content. On the other hand, the unstructured interview is not systematically planned and it is used more in exploratory research.*

in number of journals of international repute, at conferences and seminars, academic circles and university research centres. The reasons for this success of empirical methods in legal studies may be that it brings scholars from different disciplines together who have been working on legal systems from different academic perspectives.

The common goal of all the social science disciplines working on different aspects of law is to develop a systematic understanding of law/ legal systems by making use of the empirical data gathered through empirical research methods. Prior to introduction of the empirical methods, the traditional scholars in law failed to investigate the actual functioning of legal systems. As such, the actors involved in the study of legal systems remained deprived of knowledge about the functional aspect of these legal systems. The dilemmas and problems obtaining from this lack of information can only be resolved by the use of empirical research methods.

**VII. Use of Quantitative research methods:**

ELS based in US has been largely quantitative, as here more focus of the legal research has been on the economic analysis of law (Economics makes lesser use of qualitative methods, which are regarded by many scholars as less objective). On the other hand, the studies in Europe have employed qualitative research. The European studies largely employed research method to evaluate data from sources such as texts and audios and videos, and other form of visual material- here, traditionally Sociology of law has played an

important role, which worked as a barrier to spread of quantitative empirical analysis of law[27].

Some of the studies using quantitative methods of analysis in law can be discussed here. Donahue and Levitt used the method of descriptive and inferential statistical analysis to study the causal connection of legalising abortion with criminality[28]. While undertaking their study, the researchers were able to control other possible factors that could have an influence on crime rate. Their statistical analysis supported the hypothesis that legislation of abortion played a decisive role in fall of criminality in USA. They claimed that the states where abortion was legalised earlier reported more fall in crime rate than the other states where abortion was legalised later. The use of statistical calculations helped the researchers to quantify the effect of legislation of abortion on crime rate more exactly- they predicted that increase in 100 abortions in 1000 thousand live births would lead to decrease in crime rate roughly by 10% in respective cohort group.

Another study of Gary S. Becker and Juilo Jorge Elias (2007) on organ donations used calculations (based on descriptive statistics) of the costs to achieve adequate supply of organs for constantly increasing number of patients who were dependent on organ transplantation[29]. According to the researchers, legalising organ donation would encourage

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[27] Posner, R. A, *The Future of the Economics and Law Movement in Europe*, INTERNATIONAL REVIEW OF LAW AND ECONOMICS 17(1): 3- 14 (1997).

[28] Donahue, J. and S. D. Levitt, *Impact of Legalized Abortion on Crime*, QUARTERLY JOURNAL OF ECONOMICS, 116(2)- 29- 49 (2001).
Donahue, J. and S. D. Levitt, *Further Evidence that Legalized Abortion Lowered Crime Rate. A Reply to Joyace*, UNIVERSITY OF ILLINOIS LAW REVIEW (5): 1713- 1738 (2011).

[29] Becker, G. S. and J. J. Elios, *Introducing incentives in the Market for Live and Cadaveric Organ Donations*, THE JOURNAL OF ECONOMIC PERSPECTIVES (3): 3- 24 (2007).

donations not only from close relatives but also by anonymous persons for financial motives. They even calculated the amount of financial incentive for closing the gap between demand and supply of organs. These calculations were based on three factors- compensation for risk of death, compensation for the time lost during recovery and compensation for reduced quality of life.

## VIII. Use of Qualitative research methods

The qualitative methods of research are closer to doctrinal research- they are more oriented towards interpretation, hence they are highly suitable for lawyers who wish to conduct empirical research, but are not trained in quantitative analysis methods[30].

**Court ethnography:** Ethnography method involves the investigators studying the everyday life of the subjects, by completely immersing themselves in the institutional setting, whereby they observe and interact with the subjects under study. They watch what happens during the court proceedings, listen to what is being said and ask questions[31] through participant observation, archival research and media analysis[32]. There are high returns of applying the court ethnography, but it has been observed that litigation as a social process and courtrooms as social space have been

[30] FLICK, U., INTRODUCING RESEARCH METHODOLOGY. A BEGINNER'S GUIDE TO DOING RESEARCH PROJECT (Sage 2011)

[31] HAMMERSLEY, M. AND P. ATKINSON, ETHNOGRAPHY: PRINCIPLES AND PRACTICE (Routledge 1995).

[32] HARRIS, M. AND O. JOHNSON, CULTURAL ANTHROPOLOGY (Needham Heights 5th edn. 2000), MA: Allyn and Bacon.

ignored for long, or have got little attention by the legal scholars and social scientists[33].

Benson understood the power that courts wield in the enactment of human values, and used the court transcripts and court issued opinions discursively to study court litigation and underscore the issue of access to the courts on the parts of the plaintiffs in environmental litigation. Similarly, Jepson used discursive approach towards analysing courts and focussed his attention on how legal discourse deployed in courts re-scripted the traditional narratives of her subjects, further oppressing them in the guise of new politics that mobilized through the power of courts[34]. Jepson's and Benson's work indicate towards the link between the power of the courts and courtroom discourse with legal outcomes.

Courtrooms are the places where legal and lay participants in a trial meet to settle their differences and for centuries. They have been seen as very stressful contexts, and appear to be extremely complex and daunting, especially for the uninitiated people. As such, the courtrooms provide rich source to study the power and asymmetrical situation of trial. Some studies on courtroom discourses focus on the need of analysing the courts as an extra- linguistic factor that place lot of powerful constraints on the trial participants, and thus, on the language they use and in their behaviour[35].

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[33] Benson, M.H., *Rules of Engagement: the spatiality of judicial review* in Braverman, I., N. Blomley, D. Delany, and S.K. Alexandre (eds),THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY (Stanford University Press 2014).

[34] Jepson, W., *Claiming Water: Contested legal geographies of water in south Texas*, ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 102(3): 614-631 (2012).

[35] Marcela Farcasiu, *The Ethnography of the Courtroom in American and Romanian Criminal Justice System*, INTERNATIONAL JOURNAL OF EDUCATION AND RESEARCH 1(4) (2013).

The court ethnography method has been used extensively by Srimati Basu to study marriage, divorce, violence and mediation[36]. In her study the scholar depicted everyday life in legal sites of marital trouble, re-evaluating feminist theories of law, marriage, violence, property and state. She argued that Alternative Dispute Resolution (ADR), which are meant to empower women in a less adversarial legal environment, has paradoxically reinforced oppressive socioeconomic norms that leave women no better off, individually or collectively. Her research is based on observation of courts, police stations and mediation session of rape and domestic violence in India. Through the ethnographic vignettes, she argued that despite legal reforms, legal procedures reproduce structural vulnerabilities generated by marriage.

Pratiksha Baxi is another scholar who used the court ethnography method to describe the everyday socio- legal processes underlying the rape trials in Indian courts[37]. Apart from referring to critical readings from juridical archives, Baxi gathered data through ethnographic study of rural District and Sessions Courts in Ahmedabad (Gujrat). Her study demonstrated how the rape trials furnish scripts of the social via the juridical bodies of victimized women. Applying the sociological and anthropological orientation, Baxi's study used participant observation, extended case study and ethnographic interviews to provide a deep sighted view on rape trials in the courtrooms. She observed that the rape trials are characterized as sexualized spectacle and attention is focussed on the multiple ways in which public secrecy is subjected to specific revelations in rape trials- which do not bring any justice to the victims. The trials rather address and

[36] BASU, SRIMATI, THE TROUBLE WITH MARRIAGE: FEMINIST CONFRONT LAW AND VIOLENCE IN INDIA, (Univ. of California Press 2015)

[37] BAXI, PRATIKSHA, PUBLIC SECRETS OF LAW: THE RAPE TRIALS IN INDIA

reinforce the deeply entrenched phallocentric notions of justice.

Daniela Berti and Devika Bordia have presented an anthropological study on juridical practices, where they looked at the criminal cases as frameworks to examine power dynamics within a legal setting[38]. Their work provides an interdisciplinary perspective to criminal cases, where the authors examine the way in which the criminal cases are dealt in South Asian courts. The case studies considered in this volume analyse the set of state and non- state institutions and practices of people associated with them. They cover the underlying tensions in institutional contexts between legal practitioners such as lawyers and judges, and police officers, who orient their claims towards neutralism, objectivity and equality. They also delve into everyday interactions and decisions where cultural, social and political factors play a major role. The contributors to this volume examine the discourses and relationships around criminal cases that shape how ideas circulate in public sphere and how mediation and negotiation between actors characterize police and court practices.

## IX. Experimental Methods- Mock trials/ mock juries as tools of research

Mock trial is an act or simulation/ imitation trial. It is similar to moot courts, but here the judge, attorneys and witnesses, all are actors and would involve witness examination and evidence examination as well (which is not done in moot courts). Various institutes organize competitions based on fictional case or pre-decided cases,

[38] Daniela Berti and Devika Bordia (ed), *Regimes of Legality: Ethnography of Criminal Cases in South Asia*, CLARENDON STUDIES IN CRIMINOLOGY (2015).

where the participants are asked to prepare their arguments from both sides. It may be regarded as a better teaching tool for law students, as it helps to groom them in the area of witness examination, cross- examination and examination of evidences. The participants engage themselves in arguing the cases as attorneys from both sides, and as judges who preside over the cases. Thus, mock trial used as a simulation modelling technique that allows enhancing interdisciplinarity in teaching, which is an important way meeting the dynamic needs of students in close connection of theoretical and practical training of future specialists[39].

American Bar Association has suggested the propensity of mock trial (or mock court) as interdisciplinary tool of legal education. Sergey Petkov, Viktorria M. Savishchenko et al indulged in experimental testing of mock court in courses of criminal law and civil law[40]. The authors used mathematical data processing and STATA software to analyse the results obtained and to objectively consider the dynamics of changes in personality, operational, cognitive, technological and communicative components of trials, which are important factors in professional socialization of law students.

Mock juries are used by law firms/ organizations to help their clients to consider the various decisions that may be taken by a jury. They claim to provide litigation support services to outside counsel and corporate legal departments. For example Courtroom Sciences Inc. (CSI), a litigation

[39] Mock trials are educational tools that help students to develop communication skills and help them in public speaking. As such, they are useful not only for law students, they can be used in other areas also such as theatre.

[40] Sergey Petkov; Viktoriia M. Savishchenko et al., *Application of Mock-Court as an Interdisciplinary Model for Consolidation of Professional Training of Law Students*, JOURNAL OF EDUCATION AND E-LEARNING RESEARCH 7(2): 122-129 (2020).

research company, offers comprehensive suite of services which assists the legal counsels in managing the lifecycle of litigation that they indulge in, and helping them in reaching the verdict, and in providing insights that help the lawyers in tailoring their arguments, style and strategy while taking up a case[41].

Mock jury experiment has been considered as an important tool to challenge many common assumptions about jury behavior. Here, research participants are randomly assigned to alternative trial conditions and asked to reach a verdict in a simulated case[42]. Over the years, researchers have tried to study jury behavior by using methods of archival analysis and mock jury experiments. In the archival method, jury verdicts are sampled from court records and analysed statistically to describe longitudinal trends and to identify relations between verdicts and case characteristics[43]. But the archival data sources omit great deal of potentially relevant information, and only document what juries have done, and not how or why they do it. The mock jury experiments have been used to test hypotheses about causal influences on jury behavior and develop theoretical models of the jury deliberation process.

Maccoun comments that researchers need to infer the how and why of jury decisions- the mock jury method helps in disentangling natural covariation among cases and trial characteristics[44]. Through the controlled experiments with random assignment to conditions under study, the

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41 https://www.courtroomsciences.com/blog/litigation-consulting-1/a-tale-of-two-mock-trials-the-importance-of-realistic-simulation-5

42 Maccoun, Robert J., *Experimental Research on Jury Decision- Making*, S CIENCE Vol 244, Issue 4908 1046-1050 (1989), DOI: 10.1126/science.244.4908.1046

43 Hensler, D R et al, *Trends in Tort Litigation: The Story Behind Statistics*, RAND, Sant Monica, CA (1979).

44 See *Supra* note, 42.

researchers are better able to understand the jury decision making process. The mock jury approach also has the additional advantage of permitting replication across juries within the context of single jury. It has helped in understanding the conditions under which the jury performance can be enhanced.

Though mock trials and mock juries can be used as important and potent research tools in the area of academic studies in law, one finds lesser evidence, or no evidence of academicians or scholars referring to them. The experimental situations created in mock trials and mock juries can help one in understanding, for example, what is the role of the ethnic background of the lawyer or judge, or what is their political affiliation, and what kind of impact it can have the case proceedings and final decision in the case. If the same case is given to multiple teams in mock trial or mock jury activities/ competitions, these variables can be scientifically studied and their impact on decision making in the court can be assessed.

**X. Summing up**

Law is an integral part of society and aims to organize society in a systematic and peaceful order, the research tools of law need to be altered to cope up with present challenges of society and root out the social evils. Empirical legal research is the best tool for this. There is no doubt that doctrinal legal research is an indispensable tool of academic research in area of law. But it cannot undermine the role of empirical research tools. The latter give a deeper and more holistic understanding of the social context of law and help the researcher in unearthing the interdisciplinary angle of law. It relies upon first- hand information gathered by the researcher and relates more with social values and people.

Though empirical legal research is making strong impact in legal studies in American and European countries, it is still used less in context of India. The academicians, research scholars and students in India resort to the conventional method of doctrinal research and don't incline towards empirical methods. There is no doubt that research tools like court ethnography can provide very rich information on law subjects and can help us to unravel perspectives that are missed by researchers engaging in doctrinal research. It is essential that we train the Indian academicians and scholars in empirical tools and hone their researching skills. The relevance of experimental methods (mock trial/ mock jury) in law research also needs to be explored.

## Chapter - 7

# FUTURISTIC RESEARCH AND INQUISITION

*R.N Sharma**
*Sarita***

## I. Meaning of Research

Research means to examine, ask, or test in a specific area of discipline. It is a cautious and definite investigation of a subject to accumulate more data about it. This should be possible by adding, erasing, refreshing, isolating, or revising the past information.

Individuals purposefully or without purpose are associated with the course of exploration in their everyday life. The human brain is full of interest, questions, and curiosity. It leads an inquiry about something eventually in a day. The term research is itself comprised of two words, 'Re' and 'Search'. Re implies once more, and Search is to examine or test. In other words, looking or examining, over and over, is what we call research.[1]

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[1] Manning J, Kunkel A., *Making meaning of meaning-making research: Using qualitative research for studies of social and personal relationships*, JOURNAL OF SOCIAL AND PERSONAL RELATIONSHIPS 31(4) 433-441 (2014).

According to M. Stephenson and D. Slesinger in the encyclopaedia of social sciences, research is "the manipulation of things, concepts or symbols to generalize to extend, correct or verify knowledge, whether that knowledge aids in the construction of theory or the practice of an art"[2]

According to the American Sociologist Earl Robert Babbie, "research is a systematic inquiry to describe, explain, predict, and control the observed phenomenon. It involves inductive and deductive methods."[3]

According to Grinnel, Research is a systematic study and investigation in some fields of knowledge, undertaken to establish facts or principles and to seek beyond the horizons of our knowledge some truth or some reality[4].

According to Manheim: Research is the careful, diligent, and exhaustive investigation of a specific subject-matter aiming at the advancement of mankind's knowledge and revision of accepted conclusions in the light of newly discovered facts.[5]

In simple words, the research is an inquiry or search for fact or truth based on original sources of knowledge. It is also possible through observation of new facts and by formulation of new thought and ideas.

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[2] https://econepalabhi.wordpress.com/2015/06/15/research-methodology-chapter-1-introduction/ (Last Visited on 8 March 2022)

[3] https://www.questionpro.com › blog › what-is-research.

[4] https://www.gGrinnel:in+the+encyclopedia+of+social+sciences%2C+research&aqs=chrome.69i57.4380j0j4&sourceid=chrome&ie=UTF-(Last Visited on 8 March 2022)

[5] https://en.wikipedia.org/wiki/Mannheim_Centre_for_European_Social_Research (Last Visited on 8 March, 2022)

1. Research is a process of collecting, analyzing and interpreting information in order to answer the questions.
2. A set of skills to critically examine aspects of an issue/information by developing habit of questioning.
3. It is a systematic examination of the observed information to find the answers with a view to institute appropriate changes for an effective solution to the issue.
4. To find the solutions of problem through proper procedure /method/ techniques which can be tested for their reliability and validity.
5. Research design should be based on certain objectives and without biasness.
6. The approach should be based on quantitative / qualitative and academic discipline of the topic.

**II. Characteristics of Research**

Following are the characteristic features of research:

1. Great research follows an orderly way to deal with precise information. Researchers need to take into consideration ethics and a governing set of principles while mentioning objective facts or reaching determinations.
2. The investigation depends on intelligent thinking and includes both inductive and insightful strategies.
3. Constant information and information is gotten from genuine perceptions in regular settings.

4. There is an inside and out investigation of all information gathered so there are no irregularities related with it.

5. It makes a way for producing new inquiries. Existing information sets out more examination open doors.
6. It is logical and utilizes every one of the accessible information with the goal that there is no equivocalness in induction.
7. Exactness is one of the most basic parts of research. The data should be precise and right. For instance, research centres give a controlled climate to gather information. Exactness is estimated in the instruments utilized, the alignments of instruments or devices, and the test's eventual outcome.[6]

## III. Types of Research

Research can be of many types keeping in view its aim, objectives, application, methodology to be followed, subject of research, number of samples, validation and verification, innovative ideas, innovative mind set and ethical norms to be followed.

Research is tied in with involving laid out strategies to examine an issue or question exhaustively fully intent on creating new information about it.

It is indispensable apparatus for logical progression since it permits researchers to demonstrate or discredit speculations in view of obviously characterized boundaries, conditions and suppositions. Because of this, it empowers us to certainly add to information as it permits exploration to be confirmed and reproduced.

[6] https://onlinelibrary.wiley.com/doi/abs/10.1002/asi.20885 (Last Visited on 1 March 2022).

Knowing the sorts of research and what every one of them centres around will permit us to all the more likely arrangement your undertaking, uses the most proper systems and strategies and better impart our discoveries to different scientists and managers.

There are different sorts of research that are characterized by their goal, profundity of study, dissected information, time expected to concentrate on the peculiarity and different variables. It's essential to take note of that a research undertaking won't be restricted to one kind of exploration yet will probably utilize a few.[7] The research can be of following types according to their objective, nature and methodology to be followed.

**A. Application Based**

If one inspects research according to the point of view of its application, there are two expansive kinds of exploration as indicated by this thought.

i. Pure Research
ii. Applied Research

**i. Pure Research:** Pure Research is a cycle that incorporates improvement and testing of different hypotheses having a spot with particular fields of life and building hypothesis on the reason of these upgrades and tests. These perspectives are vigilantly pursuing for a researcher, yet it isn't upheld much in our educational and sensible structure. Subsequently, this sort of investigation incorporates outstandingly

[7] https://research-methodology.net/research-methodology/research-types/ (Last Visited on 1 March 2022).

confined kind of works like theory holding theoretical and thoughts that are at this point been specific. Plus, impeccable Research is moreover focused about the possibility of progression, check of answers to unmistakable requests and refinement of investigation frameworks. It moreover joins gloriousness in strategy, techniques and gadgets used by the investigator that structure the gathering of investigation approach. Test of pure investigation joins making a testing system that may be associated with a particular situation; making a technique to assess the authenticity of a philosophy; making an instrument, say, to quantify the tension level in people; and finding the best strategy for estimating the people's perspective towards different kind of plans. To add to the current assortment of the investigation schedules, the learning made through the pure assessment is used.[8]

ii. **Applied Research:** In the field of sociologies most of the investigation is connected. In more fundamental words, in incorporates the utilization of the parts like procedure, techniques and systems that structure the collection of a nice research, and their only explanation in contacted the social occasion of information about various pieces of a situation. It moreover incorporates such issues, issues and sensation that can help in get-together information that can furthermore be used inside various courses too. These various ways might consolidate approach of methodology course of action, association making and redesign of comprehension of a wonder.

[8] https://research-methodology.net/research-methodology/research-types/applied-research/ (Last Visited on 1 March 2022).

While directing applied research, the researcher takes additional consideration to recognize an issue, foster an exploration speculation and goes on to test these theories by means of a test. By and large, this exploration approach utilizes observational techniques to tackle viable issues.

Applied research is now and then viewed as a non-precise request in light of its immediate methodology in looking for an answer for an issue. It is commonly a subsequent examination plan that further explores the discoveries of pure or basic research to approve these discoveries and apply them to make imaginative arrangements.[9]

**B. Objective Based**

Assuming one inspects and review research according to the viewpoint of its objectives extensively; objective based sorts of research can be delegated as descriptive, co-relational, explanatory and exploratory.

i. **Descriptive Research:** A research concentrate on designated an illustrative review attempt to portray intentionally a situation, a perplexing issue, a significant peculiarity, figured out organization or in general organized framework, or it gives information about the living conditions of a particular gathering, or tends to depict people's demeanour towards an issue. For example, an assessment philosophy might try to depict, and multifaceted such organization gave by an affiliation, the administrative design of an affiliation, the residing provinces of aboriginal people in the

[9] https://researchpedia.info/application-based-types-of-research/ (Accessed at 11 AM March 1, 2022).

outback, the necessities of a gathering, what it means to encounter a partition in our overall population, what are the results with a youth residing in a house with harmful conduct at home, or the direct of delegates towards their chief.[10]

ii. **Co-relational Study:** The essential emphasis in a co-association is to concentrate on find or make the presence of a relationship/alliance/ dependence between at least two pieces of portrayed situation. What influences an advancing campaign can result in on the proposal of a thing? What is the explanation and connection between upsetting living of an individual and what could be the pace of heart attacks? Do people's thought process is the connection between readiness of region and mortality of individuals? What is the association in advancement and joblessness? What could be the effects of a prosperity organization for the control of a viral disease, for sure might possibly be the eventual outcomes of the home climate on informational achievement? These examinations break down whether there is a connection between at least two pieces of a situation or peculiarities and, subsequently, are called co-social investigations.

iii. **Informative Research:** Consistent assessment tries to clarify why and how there is a connection between two parts of a circumstance or peculiarities. This kind of assessment tries to explain, for example, why upsetting residing is making move in yearly pace of heart attacks; why a diminishing in mortality is followed by readiness

[10] D.B. Resnik, *Objectivity of Research: Ethical Aspects*, in ed(s): Neil J. Smelser, Paul B. Baltes, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES, Pergamon, 10789-10793 (2001).

rot; or what the home climate means for adolescents' degree of academic achievement.

iv. **Exploratory Research:** The fourth kind of research, according to the point of view reason for the objectives of a review, is known to be exploratory assessment. A review is known as exploratory investigation when it is embraced with the objective either to research a reach where little is known or to inspect the likely results of undertaking a particular assessment study.

Exactly when a review is done to concentrate its credibility it is furthermore called feasibility study or a pilot study. Exactly when a researcher needs to examine the areas regarding which she/he has basically zero data, at this stage exploratory review is done and is believed to be most important under such circumstances. A little scope study is continually decided to be endeavoured if it merits finishing a coarse assessment of an issue. On the reason of the evaluation that is commonly made all through the exploratory review, a total and significant review might help the investigators doing what needs to be done. Exploratory review is in like manner prompted make refine and test assessment gadgets and strategies.

In spite of the way that, theoretically, an investigation review could be requested in one of the above objectives' perspective arrangements, by and by, most examinations are a combo of the underlying three; that is, they hold parts of particular, co-social and educational assessment, making an investigation report ask you to join these points.[11]

[11] https://www.formpl.us/blog/applied-research (Last Visited on 1 March 2022).

**C. Inquiry Based**

It gives mischievous issues to settle in view of perception and get-together proof. Request based research requests that understudy's interface key ideas and inquiries with dynamic contribution in discipline-explicit request techniques and examination. The objective is to include understudies with effectively challenged questions, experimental perception, utilizing discipline-explicit advances, and the feeling of fervour that comes from attempting to track down replies to significant inquiries and additionally to introduce more inquiries.[12]

**D. Innovation Based**

Sometimes while pursuing research some new innovative ideas come to the mind of researcher which are novel one.

Innovation is the most common way of producing new and exceptional thoughts or arrangements and applying them to make an incentive for the client.

Innovation can occur in different ways. You can design a completely new item or an administration that doesn't exist on the lookout yet, or you can change a current item or administration to make something novel.

**i. Innovative Process**

Few out of every odd innovation will be a triumph, however, to build the possibilities having a beneficial outcome

[12] https://www.slcc.edu/gened/hips/inquiry.aspx#:~:text=Inquiry%2Dbased%20Research%20gives%20students,specific%20inquiry%20methods%20and%20research. (Last Visited on 1 March 2022).

on the lookout, follow the means and the techniques beneath. Tweak the means to match the requirements of your organization.

Step1: Identify the issue. It could exist inside your objective market or inside your association. Analyze what is happening to comprehend the issue completely. On the off chance that you like, you can contact your objective market with overviews to find out about what's upsetting them in more detail.

Stage 2: Come up with arrangements. While you can create a thought for something that isn't in presence previously, you can likewise adjust your present item or administration to construct something new and much better.

What you really want to remember is that anything your thought is, it ought to be beneficial to your association. In the event that an answer is probably going to bring no benefits, it is an exercise in futility to foster it further.

Stage 3: Test your answer for check whether it really works. Before you begin putting cash in your answer, it is beneficial to try out a low-spending plan model of it first.

You can expose it to a chose gathering of possible clients and partners and perceive how they respond. Utilize their viewpoint to refine and consummate what you offer.

Stage 4: Launch your item or administration to the market to perceive how it is being invited. In light of the reaction, you can keep on working on your item.[13]

[13] https://creately.com/blog/diagrams/methods-of-innovation-process/ (Last Visited on 1 March 2022).

**ii. Methods of Innovation**

By adopting methods which are novice to others can be classified as innovative method. A method to innovative requires following exercises to be under taken

**1. Brainstorming:** There are various conceptualizing strategies you can attempt with your group to create thoughts for advancements.
A portion of the more organized conceptualizing methods that can assist you with development are six reasoning caps, mind maps, fondness graphs, and pretending works out.

Methods like fishbone outline and 5 whys will likewise assist you with organizing meetings to generate new ideas pointed toward observing the underlying driver of an issue.[14]

**2. Six Sigma (DMAIC):** DMAIC is a technique for process innovation. This approach assists you with recognizing shortcomings and blockers in cycles and make enhancements. It comprises of a 5 staged process which incorporates the accompanying advances.

- Characterize the issue that influences your client or your interaction.
- Measure the degree of the issue.
- Investigate the issue to observe its main driver.
- Move along. Conceptualize significant arrangements and execute them to relieve the underlying driver.
- Control. Keep up with the upgrades by continually observing them.

[14] https://uxmag.com/articles/5-methods-for-innovation-you-should-try-with-your-team (Last Visited on 1 March 2022).

**3. Design Thinking:** Design thinking includes a five-stage process that adopts a deliberate strategy to tackling issues. It helps track down arrangements by zeroing in on the requirements of the client.

The design thinking process involves the following steps:

- **Relate**: a profound comprehension of the objective buyer you are planning the item or administration for
- **Characterize:** Synthesize and dissect the client research information to distinguish the center issue that you should address with your center arrangement
- **Ideate:** Gather your group together to create thoughts for items or administrations with the assistance of how you might interpret the customer and their concern
- **Model:** Create a reasonable low-devotion model of the item to get the adequacy of your answer
- **Test:** Check how compelling your answer is by trying it with the end client. Think about their criticism and roll out the important improvements.[15]

## IV. Innovative Research

Innovative research is a quest for new business and key strategies and techniques. They create and improve notable philosophies, empowering the execution of new and better solutions.

Innovative research centers around making novel thoughts, breaking down issues, diagnosing them and distinguishing their causes.

[15] https://www.sisinternational.com/solutions/innovation/innovation-research/ (Last Visited on 1 March 2022).

Innovative research makes new business arrangements, techniques, innovations, and cycles. They execute and notice present day, further developed techniques, set research speculations, and foster an approach of key exploration targets.[16]

Ways of encouraging innovative and influential research-

1. Revising Institutional Conditions
2. Rethinking Professional Norms
3. Cultivating a More Scholarly Identity: From Gap-Spotter to Path-(Up)Setter
4. A Need to Consider Alternative Methodologies for Theory Development[17]

**A. Innovative Research Methods**

Innovative Research Methods is a local area-based space for investigating new, creative and innovative approaches to directing, showing, displaying and using scholastic research. Expert's or alternately bachelor's undertaking studies are urged to share their visual and advanced research projects, talk about with peers and get ground-breaking thoughts for fostering their exploration. The stage likewise joins best acts of different disciplines, running after an abilities centre point.

[16] Fryer M., *Some key issues in creativity research and evaluation as soon from a psychological perspective*, CREATIVITY RESEARCH JOURNAL 24(2) 21- 28 (2012).

[17] Fields Z, Bisschoff C., *Comparative analysis of two conceptual frameworks to measure creativity at a university*, PROBLEMS AND PERSPECTIVES IN MANAGEMENT, 12(3) 46-58 (2014).

**Methodology: Developing the Model**

The result of the hypothetical model dwells in the effective recognizable proof of the imagination impacts, and the separate estimating measures relating to each impact. This result was accomplished by following the means underneath:

Stage 1: Identification of innovativeness influences through research and literature study.
Stage 2: Reduction of inventiveness impacts from 28 to 11.
Stage 3: Operationalization of impacts; and
Stage 4: Identify the estimating standards per-training to the develops.[18]

**There are five key steps in creating an innovation mindset**[19]

Innovation is tied in with creating something new that impacts the market and makes an incentive for the stakeholders. Innovation is an issue of attitude, and making that outlook goes before all the other things. As I would see it, it's the development outlook that abrogates the parts of human instinct that are regularly keeping down advancement in enormous associations.

**1. Be open to change:** To be available to change means to concede and embrace the idea that the world is in consistent change and all areas of society are tested by this change. It likewise means to know about where this changing world is making a beeline for inquisitively monitor change and new

[18] Fields Z, Bisschoff C., *A theoretical model to measure creativity at a university*, JOURNAL OF SOCIAL SCIENCES, 34(1) 47-59 (2013).
[19] Fields Z., *A Conceptual Framework to Measure Creativity at Tertiary Educational Level*, PhD Thesis, Unpublished. Potchefstroom: North-West University (2012).

peculiarities. At last, it additionally implies that you need to continually continue to examine what the change means and what the potential results of the change will be for your business.

Change is something precarious - we as a whole need to manage it and associations are the same. Tolerating the way that mechanical change is going to affect your business is normally extremely hard for laid out associations.

**2. Embrace creativity:** The other part of an inventive outlook is to genuinely embrace inventiveness. A pioneer's disposition is that imagination is the answer for issues, rather than a customary logical strategy.

Be that as it may, significantly, to compare development with craftsmanship doesn't preclude the need of design, cycles, and approach for advancement. Every one of these is required additionally while rehearsing the craft of advancement.

**3. Think big:** Today, most academic researchers and specialists on advancement concur that development is regarding something beyond steady upgrades to existing items or item augmentations

This prompts the point that innovation requires a capacity and the fortitude to imagine greater possibilities and past the current standards and facts on the lookout. Advancement is tied in with extending one's considerations of regular conventional reasoning and investigation.

We'd contend that large reasoning and development is a blend of scientific abilities, enterprising soul, and the capacity to fantasize.

**4. Show courage:** Innovation doesn't occur except if associations and the pioneers inside them dare to continually re-examine how things should be possible. It takes boldness not to adjust to inescapable convictions and famous "facts" in enormous associations. It takes boldness to challenge demonstrated methodologies and effective items and administrations before they go into decline. It takes mental fortitude to be helpless rather than avoiding any unnecessary risk as indicated by laid out business practice. It takes fortitude to wander into the new and dubious, flirting with disappointment.

**5. Think and act fast:** Innovation inside an association should be a quick interaction to stay aware of the change happening outside of the association.

20th century innovation was regularly a sluggish interaction, with long lead times from thought to idea, and idea to showcase. A great deal of time as a rule went into broad R&D. In the auto business, for instance, the time span to imagine, plan and send off another vehicle model has been around eight years.

To summarize all of this compactly, there are five fundamental fixings to an advancement mentality. We should be available to change, have an inclination towards to inventiveness, a capacity to imagine greater possibilities, unwavering boldness to challenge the standard, and be described by speed of thought and activity.

An association with the craving to be imaginative should think quickly and apply a high-speed advancement process with an effective go-to-showcase guide. In this specific circumstance, it's likewise basic to stick to the thought of "bombing quick", as novel thoughts and ideas must be tried out

rapidly and be closed down similarly as fast on the off chance that they don't fly. Along these lines, the association can move assets to the following idea as opposed to stalling out in an impasse advancement project, on the grounds that all things considered, the world's straightaway "huge thought" is not far off.

**Innovative research methods and techniques:**

Following are the innovative research methods:

New data correspondence innovations offer further choices how to move toward more straightforwardly the clients and their perspective and direction. These new advances empowered the formation of a few innovative strategies and procedures, which are used in advertising research to gather, process, and break down information.

These are several Innovative research methods and techniques

- Online communities
- Mobile surveys
- Social media analytics
- Text analytics
- Big data analytics
- Webcam-based interviews
- Eye tracking
- Mobile qualitative research
- Mobile ethnography
- Micro-surveys
- Prediction markets
- Research gamification
- Crowdsourcing

- Virtual environments
- Facial analysis
- Neuro marketing
- Biometric response[20]

**B. Types of Innovation Processes**

Innovation can be a befuddling subject since there are such countless various types of developments out there and everybody appears to utilize the term in an unexpected way.

Despite the fact that you regularly find out about advancement as far as innovation and in spite of the fact that it is actually the case that mechanical development has been, and will probably keep on being, the clearest type of advancement, it comes in assortment of different structures as well.

Most Innovation are more modest, slow enhancements for existing items, cycles and administrations while certain developments can be those historic innovative creations or plans of action that change businesses.

Accordingly, realizing what kinds of innovations there are for an association to seek after can assist you with finding the ones that are generally reasonable for your business. Understanding and zeroing in on the most potential ones not just assists you with answering to these changing requirements yet additionally permits you to work on your capacity to develop the business.[21]

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[20] Hadzigeorgiou Y, Fokialis P, Kabouropoulou M., *Thinking about creativity in Science Education*, CREATIVE EDUCATION, 3(5) 603-611 (2012).

[21] Duff A, Duffy T., *Psychometric properties of Honey and Mumford's Learning Styles Questionnaire (LSQ),* PERSONALITY AND INDIVIDUAL DIFFERENCES, 33 147-163 (2002).

### i. Incremental Innovation

Most innovations are steady, progressive, and constant upgrades in the current ideas, items or administrations in the current market.

Gradual innovations are somewhat better compared to the past adaptation of the item or administration and have just slight minor departure from a current item definition or administration conveyance technique.

Items can be made more modest, simpler to utilize or more appealing without changing the center usefulness of it and administrations can be made more effective through steady improvement.

Albeit gradual innovation doesn't make new business sectors and frequently doesn't use fundamentally innovation, it can draw in more lucrative clients since it satisfies the client needs distinguished from their conduct or input. The item or administration may likewise engage a bigger, standard market assuming you're equipped for giving similar functionalities and worth at a lower cost.

What's advantageous with regards to gradual innovation is that it's regularly simple to sell since you don't have to clarify the vital standards of your item or administration - individuals are as of now acquainted with the manner in which it works. A potential drawback is that gradual innovation doesn’t really have an immense effect since they're frequently somewhat better compared to what's as of now out there.

### ii. Disruptive Innovation

Disruptive innovation is a hypothesis that alludes to an idea, item, or a help that makes another worth organization either by entering a current market or by making a totally new market. In the start, Disruptive innovation have lower execution when estimated by customary worth measurements yet has various viewpoints that are esteemed by a little section of the market. These kinds of innovations are frequently equipped for transforming non-clients into clients yet don't really speak to the requirements and inclinations of the standard clients, essentially not right now.

What makes Disruptive innovation troublesome is that laid out associations are totally normal while settling on choices connected with their current business. They neglect to acclimate to the new contest since they're too centred on enhancing the current contribution or plan of action that has shown to be effective in the market up to this point.

Accordingly, the market is for the most part upset by another participant rather than an occupant.

### iii. Sustaining Innovation

Sustaining innovation is something contrary to disruptive innovation as it exists in the current market and on second thought of making new worth organizations, it improves and develops the current ones by fulfilling the necessities of a client.

Very much like incremental innovation, the item execution of Sustaining innovation is made somewhat better with each cycle, decreasing imperfections. The new superior rendition of the item can be costlier and have higher edges

than the past one assuming it targets seriously requesting, top of the line clients with preferable execution over what was beforehand accessible.

Notwithstanding, it should be less expensive in the event that it prompts higher volumes and subsequently higher outright benefits.

### iv. Radical Innovation

Radical innovation is intriguing as it has comparable attributes to disruptive innovation however is different such that it at the same time utilizes progressive innovation and another plan of action.

Radical innovation takes care of worldwide issues and addresses needs in totally new ways than what we're utilized to and even gives answers for requirements and issues we didn't realize we had, totally changing the market, or even the whole economy. Albeit radical innovations are intriguing, there have been increasingly more of them in the new past.

Technological innovations, for example, PC and the web are instances of revolutionary advancements that have changed the way the whole world capacities and conveys. These disruptive innovations give our general public a stage to expand on top of, prompting profoundly sped up financial development.[22]

[22] EpplerMJ, Hoffmann F, Resciani S., *New business models through collaborative idea generation*, INTERNATIONAL JOURNAL OF INNOVATION MANAGEMENT, 15(6) 1323-1341 (2011).

### v. Deontology and Teleology

Morals or moral way of thinking is a part of reasoning that includes inquiries regarding ethical quality and the view of good and fiendishness, of good and bad, of equity, excellence, and bad habit. It has the accompanying branches: meta-morals, regulating morals, applied morals, moral brain research, and elucidating morals.

These branches have a few unique ways of thinking and subfields, among them are: hedonism, Epicureanism, stoicism, modern ethics, applied ethics, moral psychology, deontology, and teleology or consequentialism.

Deontology is additionally alluded to as obligation-based morals. It is a way to deal with morals that tends to whether the intentions behind specific activities are correct or wrong as opposed to zeroing in on whether the consequences of the activity are correct or wrong. It depends on every individual's obligation or commitment towards one another, every living thing, and the climate in view of moral convictions and values. It instructs about continuously acting sincerely and complies with the Golden Rule to treat others the manner in which you need to be treated by them.

The Ten Commandments are instances of deontology. They are moral obligations that we have been educated since we were youngsters, and we are formed by them in the manner that we should treat others, taking everything into account and not utilizing them to serve narrow minded aims.

Teleology or consequentialism is alluded to as results-situated morals. It centres around the reason for each activity and regardless of whether there is a goal or significance for the activity. It manages the outcomes of an

activity. It includes analyzing previous encounters to sort out the aftereffects of present activities. An illustration of which is utilitarianism which is additionally alluded to as the best joy standard. It estimates how much generally speaking joy can be gotten from a specific activity and how much agony is turned away.

While deontology depends on man's outright obligation towards humankind and how it is given need over outcomes, teleology depends on the consequences of an activity and on whether an activity produces more prominent bliss and less torment.[23]

Differences between Deontology and Teleology: -

1. Deontology is a way to deal with morals which sticks to the hypothesis that an end doesn't legitimize the means while teleology is a way to deal with morals that sticks to the hypothesis that the end generally legitimizes the means.

2. Deontology is otherwise called obligation-based morals while teleology is otherwise called outcomes situated morals.

3. Deontology complies with the Golden Rule which is to do unto others what you need them to do unto you while teleology doesn't; rather, it is likewise alluded to as the best bliss rule since it legitimizes an activity in the event that it creates the best joy and least measure of torment.

[23] http://www.differencebetween.net/miscellaneous/politics/ideology-politics/difference-between-deontology-and-teleology/#:~:text=Deontology%20is%20an%20approach%20to,end%20always%20j ustifies%20the%20means. (Last Visited on 3 March, 2022).

4. Deontology educates to be fair and not to involve others for self-centred reasons while teleology instructs about doing anything activities produce an outcome that is pleasant to an individual.

5. Teleology inspects previous encounters to foresee the aftereffects of a current activity while deontology follows what is ethically correct in view of the qualities that are imparted in every individual.[24]

## V. Qualitative Research

Qualitative research is the technique analysts use to acquire profound logical understandings of clients through non-mathematical means and direct perceptions. Researchers centre around more modest client tests e.g., in interviews-to uncover information like client mentalities, practices and secret variables: experiences which guide better plans.

Qualitative research is a subset of user experience (UX) exploration and client research. By doing Qualitative research, you intend to acquire barely centred however rich data regarding the reason why clients feel and figure the manners in which they do. Dissimilar to its more insights situated "partner", quantitative research, Qualitative research can assist with uncovering stowed away facts about your clients' inspirations, trusts, needs, problem areas and more to assist you with maintaining your undertaking's emphasis on target all through advancement. UX plan experts do subjective exploration regularly from almost immediately in projects in light of the fact that since the bits of knowledge they uncover

[24] James E. MacDonald and Caryn L. Beck-Dudley, 13(8) JOURNAL OF BUSINESS ETHICS 615-623 (1994) Published by Springer.

can change item advancement significantly they can keep exorbitant plan blunders from emerging later.[25]

### A. Qualitative Research Methods

You have a decision of numerous strategies to help gain the clearest experiences into your clients' reality - which you should supplement with quantitative examination techniques. In iterative cycles, for example, client focused plan, you/your plan group would utilize quantitative exploration to recognize plan issues, find the explanations behind these with subjective examination, make changes and afterward test your better plan on clients once more. The best technique/s to pick will rely upon the phase of your venture and your targets. Here are some:

**Diary studies:** You request that clients record their exercises, associations, and so on over a characterized period. This engages clients to convey setting rich data. Albeit such investigations can be abstract since clients will definitely be impacted by in-the-second human issues and their feelings they're useful instruments to get to commonly real data.[26]

**Interviews:** Interview can be one of the research methods for qualitative research. It can be:

a. **Organized -** You pose clients explicit inquiries and dissect their reactions with different clients'.
b. **Semi-organized -** You have an all the more free-streaming discussion with clients yet follow a pre-arranged script freely.

[25] https://www.questionpro.com/blog/qualitative-research-methods/ (Last Visited on 3 March, 2022).
[26] https://libguides.uta.edu/quantitative_and_qualitative_research/qual (Last Visited on 3 March, 2022).

c. **Ethnographic -** You interview clients in their own current circumstance to see the value by the way they perform errands and view parts of undertakings.

1. **Convenience testing:**
   Convenience testing can be one of the research methods for qualitative research. It can be

a. **Directed -** In-person testing in, e.g., a lab.
b. **Unmoderated -** Users complete tests from a distance: e.g., through a video call.
c. **Guerrilla -** "Down-the-corridor"/"ready to take care of business" testing on a little gathering of irregular clients or associates.
d. **Client perception -** You watch clients will grasps with your plan and note their activities, words and responses as they endeavour to perform undertakings.[27]

## VI. Quantitative Research

Quantitative research is the method involved with gathering and investigating mathematical information. It very well may be utilized to track down examples and midpoints, make expectations, test causal connections, and sum up outcomes to more extensive populaces.

Quantitative research is something contrary to qualitative research, which includes gathering and breaking down non-mathematical information (for example text, video, or sound). Quantitative research is broadly utilized in the normal and sociologies: science, science, brain research, financial matters, social science, promoting, and so on.[28]

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[27] Gibson G, Timlin A, Curran S, Wattis J., *The scope for qualitative methods in research and clinical trials in dementia*, AGE AGEING 33:422–6 (2004).

[28] https://www.scribbr.com/methodology/quantitativeresearch/#:~:text=Quantitative%20research%20is%20the%20process,generalize%20results%20to%20wider%20populations. (Last Visited on 3 March, 2022).

**A. Quantitative Research Methods**

You can involve quantitative exploration strategies for descriptive, correlational, or experimental research. In descriptive research, you just look for a general outline of your review factors. In correlational research, you research connections between your review factors. In experimental research, you methodically analyze whether there is a circumstances and logical results connection between factors.

Correlational and experimental research can both be utilized to officially test theories, or forecasts, utilizing measurements. The outcomes might be summed up to more extensive populaces in view of the inspecting technique utilized. To gather quantitative information, you will frequently have to utilize functional definitions that interpret theoretical ideas (e.g., mind-set) into recognizable and quantifiable measures (e.g., self-appraisals of sentiments and energy levels).

**B. Characteristics of Quantitative Research**

A few distinctive qualities of quantitative research are:

1. **Organized devices:** Structured instruments like studies, surveys, or polls are utilized to assemble quantitative information. Utilizing such design strategies helps in gathering inside and out and significant information from the study respondents.

2. **Test size:** Quantitative examination is led on a huge example size that addresses the objective market. Proper testing strategies must be utilized while

inferring the example to strengthen the exploration objective.

3. **Close-finished questions:** Closed-finished questions are made per the target of the examination. These inquiries assist with gathering quantitative information and henceforth, are widely utilized in quantitative examination.

4. **Earlier examinations:** Various elements connected with the exploration subject are contemplated prior to gathering criticism from respondents.

5. **Quantitative information:** Usually, quantitative information is addressed by tables, diagrams, charts, or some other non-mathematical structure. This makes it straightforward the information that has been gathered as well as demonstrated the legitimacy of the statistical surveying.

6. **Speculation of results:** Results of this exploration strategy can be summed up to a whole populace to make proper moves for development. [29]

**C. Characteristics of Explorative Research**

Remembering this that research in any field of request is attempted to give data to help decision-production in its separate region, we sum up a few positive qualities of exploration:

1) The research should focus in on need issues.

[29] https://www.uxmatters.com/mt/archives/2012/09/strengths-and-weaknesses-of-quantitative-and-qualitative-research.php (Last Visited on 3 March 2022).

2) The research ought to be methodical. It underscores that an analyst should utilize an organized system.
3) The research ought to be legitimate. Without controlling thoughts consistently, the scientific researcher can't gain a lot of headway in any examination.
4) The research ought to be reductive. This implies that the discoveries of one scientist ought to be made accessible to different specialists to keep them from rehashing similar research.
5) The research ought to be replicable. This affirms that there ought to be extension to affirm the discoveries of past research in another climate and various settings with another gathering of subjects or at an alternate moment.
6) The research ought to be generative. This is one of the significant attributes of research in light of the fact that addressing one inquiry prompts producing numerous other new inquiries.
7) The research ought to be activity arranged. As such, it ought to be pointed toward arriving at an answer prompting the execution of its discoveries.
8) The research ought to follow an incorporated multidisciplinary approach, i.e., research comes nearer from more than one discipline are required.
9) The research ought to be participatory, including every interested individual (from policymakers down to local area individuals) at all phases of the review.
10) The research should be somewhat basic, opportune, and time-bound, utilizing a relatively straightforward plan.
11) The examination should be however much savvy as could be expected.
12) The consequences of the research ought to be introduced in designs generally valuable for directors,

leaders, business administrators, or the local area individuals.[30]

## VII. Steps in Research Process

Following steps are required to be undertaken by the researcher:

**1. Choosing the research area:** Assuming you observe a research area and research issue that is really fascinating to you it is without a doubt that the entire course of composing your exposition will be a lot simpler. Accordingly, it is never too soon to begin pondering the examination region for your exposition.

**2. Forming research point:** Goals and research questions or creating speculations. The decision between the plan of research questions and the advancement of speculations relies upon your research approach as it is talked about further underneath in more subtleties. Suitable examination points and targets or speculations ordinarily result from a few endeavours and corrections.

Likewise, you want to specify in your paper that you have overhauled your research points and goals or speculations during the research cycle a few times to get their last forms. You genuinely should get affirmation from your manager in regard to your exploration questions or theories prior to pushing ahead with the work.[31]

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[30] Bland CJ, Ruffin MT 4th, *Characteristics of a productive research environment: literature review*, Academic Medicine: JOURNAL OF THE ASSOCIATION OF AMERICAN MEDICAL COLLEGES, 67(6) 385-397 (1992).

[31] Mansfield, Edwin., *Academic Research Underlying Industrial Innovations: Sources, Characteristics, and Financing*, THE REVIEW OF ECONOMICS AND STATISTICS 77( 1) 55–65 (1995).

**3. Leading the writing audit:** Writing survey is typically the longest stage in the research cycle. As a matter of fact, the writing survey begins even before the plan of research points and goal. This is on the grounds that you need to check assuming the very same research issue has been tended to previously and this undertaking is a piece of the writing survey. By the by, you will direct the fundamental piece of the writing survey after the plan of research point and goals. You need to utilize a wide scope of optional information sources, for example, books, papers, magazines, diaries, online articles and so forth.

**4. Choosing information assortment techniques:** Information assortment method(s) should be chosen based on fundamentally dissecting benefits and disservices related with a few elective techniques. In investigations including essential information assortment, you really want to expound on benefits and burdens of chosen essential information assortment method(s) in itemized way in strategy.

**5. Gathering the essential information:** You should begin essential information assortment solely after itemized arrangement. Examining is a significant component of this stage. You might need to lead pilot information assortment assuming you picked poll essential information assortment strategy. Essential information assortment is certainly not a mandatory stage for all expositions, and you will avoid this stage in the event that you are directing a work area-based research.[32]

[32] Cummings, Greta G.; Estabrooks, Carole A.; Midodzi, William K.; Wallin, Lars; Hayduk, *Leslie Influence of Organizational Characteristics and Context on Research Utilization*, 56(4) NURSING RESEARCH S24-S39 (2007).

**6. Information examination:** Examination of information assumes a significant part in the accomplishment of exploration point and goals. This stage includes a broad altering and coding of information. Information investigation techniques shift among auxiliary and essential examinations, as well as, among subjective and quantitative investigations. In information investigation coding of essential information assumes an instrumental part to decrease test bunch reactions to a more reasonable structure for capacity and future handling. Information examination is talked about in Chapter 6 in incredible subtleties.

**7. Arriving at resolutions**: Ends connect with the degree of accomplishment of examination points and targets. In this last piece of your thesis, you should legitimize why you imagine that examination points and goals have been accomplished. Ends additionally need to cover research constraints and ideas for future exploration.

**8. Finishing the exploration:** Following every one of the stages depicted above and coordinating separate sections into one document prompts the fulfilment of the primary draft. You really want to set up the principal draft of your exposition no less than one month in short order. This is on the grounds that you should have adequate measure of time to address criticism to be given by your boss.[33]

## VIII. Sources of Research Problem

According to a research point of view, the sort of research problem that you wish to research should meet two circumstances.

[33] Didac Ferrer-Balas, Pere Ysern Comas, Heloise Buckland(eds.), *Going beyond the rhetoric: system-wide changes in universities for sustainable societies*, 18(7) 607-702 (2010).

To begin with, the issue must be one of a kind and not something different researchers have as of now investigated comprehensively. Second, the issue must be compact to the point of raising explicit issues that you can address in a research paper.[34] With that said, below are five sources of a research problem:

**1. Interviews**

Interviews meetings can be huge wellsprings of research issues. The strategy offers you a chance to have formal conversations and causal collaborations with people who can give valuable experiences into research and make discoveries more pertinent to future research.

Consider having conversations with specialists in the field you wish to examine. These experts mat be medical care specialist co-ops, business pioneers, educators, social labourers, lawyers, and bookkeepers to specify yet a couple of models.

By communicating with these specialists, you're ready to distinguish certifiable issues that scientists have either disregarded or understudied in the scholastic space. Additionally, interview meetings offer you the chance to get some functional information that can assist you with planning and direct your investigations.

[34] https://books.google.co.in/books?hl=en&lr=&id=J2J7DwAAQBAJ&oi=fnd&pg=PP1&dq=sources+of+research+problem+scholarly+articles&ots=cvpmFDJChi&sig=6WJ0PZeXLK_n84W9fNcpZqKY_u4#v=onepage&q=sources%20of%20research%20problem%20scholarly%20articles&f=false (Last Visited on 3 March, 2022).

**2. Personal Experiences**

Your ordinary encounters are a decent wellspring of research issue. You need to ponder your own encounters with an issue that influences your family, your own life, or your local area.

A research issue got from individual experience can spring from any issue and from anyplace. For instance, you can develop a research issue from occasions that give off an impression of being strange or from local area connections that don't have clear clarifications.

**3. Deductions from Theory**

An allowance from hypothesis alludes to derivations a researcher makes from the speculations of life in a general public that an analyst knows well indeed.

A researcher takes the derivation, places them in an exact casing, and afterward, in light of a hypothesis, they think of an exploration issue and a speculation that proposes a few discoveries in view of given observational outcomes.

The research represents the relationship to notice assuming a hypothesis sums up the condition of an issue. An efficient examination, which assesses assuming the exact data insists or rejects the speculation, comes straightaway.[35]

**4. Interdisciplinary Perspective**

In the event that you consider interdisciplinary point of view to recognize an issue for a research study, you'll need

[35] Herbert L. Costner and Robert K. Leik, 29(6) AMERICAN SOCIOLOGICAL REVIEW 819-835 (1964), Published by American Sociological Association.

to take a gander at grant and scholastic developments from outside your fundamental area of examination. It's a mentally including process, one that requires evaluating appropriate writing to find one of a kind roads of investigation an examination.

The advantage of utilizing this way to deal with distinguish a research issue for your exploration paper task is that it presents a chance for you to get perplexing issues effortlessly.

**5. Relevant Literature**

To create a research issue from applicable writing, you initially need to audit research connected with your area of interest.

Doing as such permits you to track down holes on the subject, making it simple for you to see exactly how much understudied your area of interest is. Information gathered from significant writing is pertinent in light of the fact that it serves to:

Fill existing holes in information in view of a particular research decide whether momentum studies can have suggestions on additional research on a similar issue check whether it's feasible to direct a comparable report in an alternate region or apply something similar in an alternate setting decide whether the strategies utilized in past examinations can be successful in taking care of future issues we can't pressure enough on the benefit of existing writing. The outcomes should point you towards a

remarkable issue, give idea for future holes, and make it conceivable to depict holes in existing information.[36]

## IX. Key Characteristics of Innovative People

"Failure and unexpected outcomes are inherent in experimental innovation. Our study demonstrates that positive adaptation to adversity and not being defeated by challenges are among the key characteristics of innovative people," stated by Esade innovation expert Lotta Hassi and Satu Rekonen of Aalto University in a study published in the *International Journal of Innovation Management*.[37]

**1. Continuous reflection:** Members with inventive conduct embraced consistent reflection - that is, they were available to scrutinizing their first thought and the course of the venture. Through ceaseless reflection, members had the option to see new snippets of data that were possibly significant for the task, similar to a radar perpetually examining the climate.

2. **Unattached exploration:** Whenever participants were unequivocally joined to a thought, they were less open to giving up and attempting different things. The individuals who were more inclined to development had the option to defer obsession with a thought and remain open to investigating various potential bearings prior to surrounding a solitary choice.

Participants who were more inclined to advancement had the option to defer obsession with a thought.

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[36] https://geographypoint.com/2015/02/4-sources-and-4-characteristics-of-research-problem/ (Last Visited on 3 March 2022).

[37] https://dobetter.esade.edu/en/characteristics-innovative-people?_wrapper_format=html (Last Visited on 4 March, 2022).

**3. Iterating between abstract and concrete thinking:** In the tests, representatives experienced issues going from theoretical ideas to substantial subtleties - most people were solid basically in one method of reasoning or the other. Be that as it may, the people who had the option to move easily among reasonable and pragmatic reasoning, keeping up with the association between the two, were more ready to recognize vulnerabilities in the thought and plan a decent examination arrangement.

**4. Action-oriented:** One more driver of imaginative people was their activity situated conduct. This character attribute permitted them to move from scholarly work to pragmatic thoughts, which demonstrated basic while building a model and running the investigation.
Activity situated people pushed their groups to move from arranging the experiment arrangement to building models and to run tries early.

**5. Opportunity-focused:** While certain people just saw impasses, opportunity-centred members had the option to see open doors in various circumstances and imparted to their groups a few potential courses for the venture - this assumed a vital part in pushing the group ahead into tests. This sort of outlook advanced imaginative conduct likewise whenever startling open doors emerged. Individuals who adjust decidedly to difficulty are more inclined to creative practices.

**6. Mental resilience:** The study demonstrates that people who adapt positively to adversity and don't let challenges defeat them are also more prone to innovative behaviours.

Mental resilience allows people to take in the new information in negative feedback, accept it in a constructive

way and remain operative. This also means being able to let go of an idea once it is proven unsuccessful and continuing to explore other solutions.

**7. Intellectual humility:** The field information uncovered that scholarly modesty was likewise at the centre of development. The more advancement driven people had a mentality that was unassuming notwithstanding new data, and they were available to advancing by recognizing the constraints of their own insight.

Scholarly modesty likewise permits transparently sharing criticism that is deterring, which might open up new roads for creating elective arrangements.

**8. Extracting learning:** The field information showed that members experienced troubles in extricating gaining from the directed investigations. To advance creative conduct, people should focus on unforeseen data or occasions, significant remarks and how input could be utilized to work on the first thought.

**9. Implementing learning and idea adaptation:** People more inclined to development been able to separate significant gaining from a test and execute that learning once more into the undertaking to adjust the thought and cause it to advance in a significant manner.[38]

Apart from all these above-mentioned characteristics the other characteristics based on mindset may also be enumerated as below:

**Innovative mindset:** Innovation is a question of mindset, and creating that mindset precedes everything else. In my

[38] https://www.forbes.com/sites/rebeccabagley/2014/01/15/the-10-traits-of-great-innovators/?sh=65ca1b234bf4 (Last Visited on 4 March, 2022).

opinion, it's the innovation mindset that overrides the aspects of human nature that are often holding back innovation in large organizations.[39]

- **Be open to change**: To be open to change means to admit and embrace the notion that the world is in constant transformation and all areas of society are challenged by this change. It also means to be aware of where this transforming world is heading and to curiously keep track of change and new phenomena. Finally, it also means that you have to constantly keep analyzing what the transformation means and what the possible consequences of the transformation will be for your business.[40]

- **Embrace creativity:** The other aspect of an innovative mindset is to truly embrace creativity. An innovator's attitude is that creativity is the solution to problems, rather than a traditional scientific method. This argument is predominant among many of those who have successfully practiced innovation in the realm of research activities. The innovation-as-art perspective– to a large extent – from the concept of design thinking.[41]

- **Think big:** Today, most academic researchers and experts on innovation agree that innovation is about more than just incremental improvements to existing products or product extensions.
  This leads to the point that innovation requires ability and the courage to think bigger and beyond the

[39] Mikael Eriksson, *Blog May 10, 2018*, in pinterest.com /pin /157696424440196382, (Last Visited on 8 March 2022).
[40] *Ibid.*
[41] *Ibid.*

current norms and truths in the market. Innovation is about stretching one's thoughts out of everyday ordinary thinking and analysis.

Big thinking and innovation is a combination of analytical skills, entrepreneurial spirit and the ability to fantasize.[42]

**Show courage:** Innovation doesn't happen unless organizations and the innovators within them have the courage to constantly rethink how things can be done. It takes courage not to conform to widespread beliefs and popular "truths". It takes courage to challenge proven strategies and services. It takes courage to question colleagues for doing things the way they have always done. It takes courage to constantly problematize and be that one person who always goes against the grain and tries to think about things from a different angle. It takes courage to be vulnerable rather than playing it safe according to established practice. It takes courage to venture into the new and uncertain, risking failure.[43]

- **Think and act fast:** Innovation within an organization must be a fast-moving process to keep up with the change going on outside your domain.

  To sum all of this up succinctly, there are five main ingredients to an innovation mindset. We need to be open to change, have a bias towards to creativity, an ability to think big, unrelenting courage to challenge the norm, and be characterized by speed of thought and action.

[42] *Ibid.*
[43] *Ibid.*

> A researcher with the desire to be innovative must think fast and apply a fast-paced innovation process with an efficient roadmap. In this context, it's also critical to adhere to the notion of "failing fast", as new ideas and concepts have to be tested out quickly and be shut down just as quickly if they don't fly.[44]

**Following steps are to be kept in mind while implementing a mindset of innovation:** To overcome the challenges, it is fundamental to implement a mindset of innovation with innovative thinking. The implementation of mindset requires following strategies[45]

**Develop or improve your innovation strategy:** The adoption of an innovative mindset has to do with the implementation of small incremental changes that pave the way for continuous improvement and growth. But you cannot do this without strategic planning.

**Encourage internal and external collaboration:** Another crucial point for the implementation of the innovative mentality is collaboration. It is very important to create a climate of mutual help and exchange of ideas.

**Invest in Technology and Qualified Personnel:** Everything that has been said so far can have a huge upgrade with true investments in technology.

**Cherish innovative ideas:** Always try to cherish the innovative idea as it motivates the researcher to go ahead even against all odds

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[44] *Ibid.*

[45] Mjvinnovation.com/blog/innovation-mindset-in your –businessd,7-6-2019, (Last Visited on 8 March 2022).

## Chapter - 8

# RESEARCH HYPOTHESIS

*Daniel Mathew**

## I. Introduction

It is often said, that all progress is born of inquiry, from a curious mind. Research is a voyage of discovery, a "*systematized effort to gain new knowledge*."[1] Its goal is to validate or prove otherwise an assumption, through clear defining of problems; formulating of hypothesis; collection, collation and analysis of data; ascertaining conclusions, and testing of the conclusions in an attempt to determine whether they answer the outlined hypothesis. Research therefore could be understood to be an original contribution to the subsisting stock of knowledge through rigorous, objective and systematic application of scientific procedures.

While every research design may have specific purpose based on the objectives for which the research is undertaken, they can broadly be classified into the following types:[2] *exploratory research* – which attempts to obtain greater understanding or insights into a phenomenon. It could be understood as an investigation into a problem that is not well understood but without the

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1 L.V. Redman and A. V. H, *The Romance of Research*, WILLIAMS & WILKINS CO. x (1933).

2 CR KOTHARI, RESEARCH METHODOLOGY, METHODS AND TECHNIQUES, (New Age International Publishers 2nd edn. 2004)

felt requirement to provide conclusive results; *descriptive research* – research with the objective to clearly and accurately outline and provide the attributes of a specific individual, situation or group. In such research, the researcher lacks any control over the variables, rather is required to report on what has or is happening; *diagnostic research* – would involve determination of the frequency with which something occurs or with which it is associated with something else; and h*ypothesis testing* – research of this nature involves hypothesis of testing a causal relationship between variables. Depending on the requirement, the researcher can select the type of research design they want to engage in.

As a result, various steps in the process of conducting research could be understood to include selection of a research area, articulating research problem(s), engaging in extensive literature survey, preparation of working hypothesis, selection of means and methods of study, preparing the research design including sample design, collection and collation of data, analysis of the collected data, hypothesis testing, and interpretation and generalisation of research data, and articulating conclusion arrived at.[3]

A critical aspect of a research therefore is having a working hypothesis. A hypothesis is "*a proposition that implies a relationship between two or more concepts, which is located on a lower level of abstraction and generality than the theory and which enables the theory to be transformed into term that can be tested*."[4] On a more

[3] TYRUS HILLWAY, INTRODUCTION TO RESEARCH, 12 (Hughton Muffin, Boston 2nd edn. 1964).

[4] PIERGIORGIO CORBETTA, SOCIAL RESEARCH: THEORY METHODS AND TECHNIQUES, 61 (Sage Publications, 2003)

general level, the term hypothesis can be understood to comprise of two terms – *hypo* meaning '*under*' and *thesis* meaning reason, which could then broadly be understood as *not a fully reasoned view*. Hypothesis could be understood as a tentative assumption, the validity of which is tested through the proposed research. It enables clear delimitation of the scope of research, identification of the data and methods of analysis that may be required. It is must be stated in precise, clear and specific terms, as it has to be tested. This makes the hypothesis a focal point of the research. As a result, it is important to pay particular attention to the formulation of a hypothesis.

Tyrus Hillway said that, an important caveat concerns the necessity of a hypothesis, while critical a hypothesis is not a must in every research. Not all researches require to state a working hypothesis and in some instance research problems are adequate enough.[5] For instance, historical or descriptive research may not require hypothesis, given their nature. The decision to have or otherwise a hypothesis would be contingent on the type of research undertaken.

## II. Relevance of Hypothesis

As indicated earlier, the hypothesis is not relevant in all forms of research. The hypothesis remains of critical importance, particularly in enabling appropriate explanation of relationships among variables, data and as a guide for the entire research process. In providing tentative explanations for relevant and observable facts, they enable a better understanding of the issues under

[5] TYRUS HILLWAY, INTRODUCTION TO RESEARCH, 130-131 (Hughton Muffin, Boston 2nd edn. 1964).

consideration. They enable logical connections between observable events and unknown conditions, in turn enhancing the researchers thought process.

Hypothesis plays an extremely crucial role in guiding research and providing it with the right direction. A hypothesis facilitates clarity on what is required to be done, and specific data that needs to be collected and analysed. It therefore provides a good basis for selection of sample and appropriate research procedures. It further enables identification of appropriate statistical tools that would be required to analyse data and ascertain relationships between variables. Hypothesis also enable crystallisation and further generalisation of conclusion from the study, and in doing so provides a framework for setting and reporting of conclusion in a meaningful way.

A well formulated hypothesis therefore provides ready and constant guidance to the overall research right from the selection to usage of research and statistical techniques, collection to analysis of data, and finally to reporting and articulating of relevant observations and conclusion. A common saying with regards to hypothesis is that even though it is stated in one or few sentences, it occupies an extremely important position in the overall scheme of the research.

**III. Requirements of a Hypothesis**

Literature on this topic identifies some important characteristics of a good hypothesis. An effective hypothesis is stated in simple and specific terms, as this enables easier and proper understanding of what is being attempted in the research by anyone who reads it. A non-specific or imprecise hypothesis, raises reliability

concerns as regards the inferences drawn from it. Another important requirement is of precision, which facilities more specific and accurate drawing of inferences. It must also be consistent with known and established facts.

In addition to clearly stating the relationship between the variables, the hypothesis must be such that is capable of being tested.[6] When one says that a hypothesis is testable it implies that from the given hypothesis "other deductions can be made from it which in turn can be confirmed or disproved by observations."[7] It cannot be stressed enough that a hypothesis must be testable, otherwise the research is unlikely to reach anywhere resulting in wastage of time and other resources. This is so because only after a hypothesis is tested and proved to be either correct or otherwise, could it be said that it has some scientific value.[8] A prudent approach therefore would be to undertake a prior study to ensure testability of hypothesis. At this juncture, it is also important to remember that a limited hypothesis is easier to test. Yet being testable is only one part of the requirement, the other being testable within a reasonable period of time. In research often time is an extremely precious resource, and a hypothesis that takes unreasonable or inordinate time to test, is likely only to result in excessive prolongation of the research.

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6 BRIDGET SOMEKH AND CATHY LEWIN (EDS.), RESEARCH METHODS IN THE SOCIAL SCIENCES, 225 (Sage Publications 2005).

7 C. William Emory, *Business Research Methods,* IRWIN 33 (1976).

8 FRANCIS JEGEDE, DOING A PHD IN THE SOCIAL SCIENCES: A STUDENT'S GUIDE TO POST GRADUATE RESEARCH AND WRITING, 187-88 (Routledge 2021).

## IV. Hypothesis Formulation

Given the above noted requirements, one is likely to feel that formulating an appropriate hypothesis is both a challenging and confounding task. That is an accurate description. While there are no precise set of rules to follow when it comes to formulating a hypothesis, some important ideas, in addition to the ones noted above, need to be borne in mind. It is important to be well versed with relevant and existing knowledge about the areas of research or on the subject matter. Such knowledge enables development of a deep level of understanding of the possible relationships further exploration of which could form the basis for the study. A very real consequence of the lack of such understanding and depth is poorly articulated hypothesis which in turn negatively impacts the quality of research.

At the same time, hypothesis forms a start of a study in an area where knowledge may be lacking or confusing, and the very purpose of undertaking the research is to add or clarify the existing knowledge. It is here that formulation of an appropriate hypothesis becomes a particularly challenging endeavour. Lack of familiarity with basic types and approaches to formulating hypothesis may present some difficulty in formulating of hypothesis.

## V. Types of Hypotheses

A constant concern about the types of hypotheses is the variation that is present among them in the existing literature. Therefore, for the purposes of this article, hypothesis more commonly used in legal research are discussed below:

a) *Simple hypothesis* – as the name suggests, a simple hypothesis tests the correlation between two variables namely an independent variable and a dependent variable. This is the most straightforward type of hypothesis. A variable represents a phenomenon or an attribute of an object, value of which is likely to change, unlike a constant, value of which remains fixed. Independent variable as the term suggests is a variable, value of which changes not owing to changes in other variables involved in the study. On the other hand, for a dependent variable, a change in the independent variable is likely to cause a change in value of dependent variable, while the reverse is not possible.[9] Independent variables are also referred to as explanatory variable, while dependent variables are referred to as response/outcome variables. For instance, if the research concerns effect of exercise on fitness, then a simple hypothesis could be regular physical exercise lowers blood pressure. A simple correction is clearly visible between regular physical exercise (independent variable) and lowering of blood pressure (dependent variable). It is important to remember that what is in focus is a link, and not prediction of causation (which is covered under directional hypothesis). As a result, variables may have either a positive, negative or zero relationship. A positive relationship implies that both move in the same direction (increase/decrease in one leads to increase/decrease in another), a negative implies an inverse relationship, while a zero

[9] NEIL J SALKIND, ENCYCLOPAEDIA OF RESEARCH DESIGN, 348-49 (Sage Publications, 2010).

relationship implies there is no significant relationship between the two variables.

b) *Complex hypothesis* – on the other hand, complex hypothesis, involves more than one variable. The link under consideration is between multiple independent and dependent variables. For instance, do age and weight increase chances of getting heart disease. The presence of multiple variables increases the complexity of links the hypothesis seeks to explore.

c) *Null hypothesis* – a null hypothesis is meant to show that no correlation or significant relationships exists between the two tests variables. A null hypothesis is also utilised to show an inconclusive correlation, in other words the research is unable to confirm a correlation between the selected variables. For instance, there is no statistically significant effect of name on life expectancy of a person. A null hypothesis is generally indicated as $H_0$.

d) *Alternative hypothesis* – the opposite of a null hypothesis could be considered as an alternative hypothesis. An alternative hypothesis shows that there is a correlation between the selected variables. It disproves a null hypothesis, in other words, for an alternative hypothesis to be true, all that has to done is to disprove a null hypothesis. The two types could be thought of as two sides of a coin, one or the other. It is not a question of intensity, rather it is a question of presence or absence of relationship between the selected variables. For instance, does drinking soft drinks

impact dental health. The null hypothesis would be drinking soft drinks does not impact dental health, while an alternative hypothesis would be that drinking soft drinks does impact dental health. An alternative hypothesis is generally indicated as $H_a$.

e) *Directional hypothesis* – unlike other types, a directional hypothesis does not stop at simply indicating presence of an effect, rather it indicates whether the effect of independent variable on dependent variable would be positive or negative. In other words, it indicates the effect's directionality, the expected direction of the relationship between the variables. As a result, such hypothesis specifies both existence and nature of relationship. For instance, increasing tax on petrol will lead to an increase in use of public transport.

f) *Non – directional Hypothesis* – would be the opposite of a directional hypothesis in that it would not specify a direction of the effect of the independent variable on dependent variable. In other words, what such a hypothesis merely does is predict an effect but not direction of such an effect. For instance, increase in wages will lead to change in use of public transport.

g) *Associative hypothesis* – an associative hypothesis merely notes correlation between independent and dependent variable without indicating towards or making any suggestion as to independent variable causing variation in the dependent variable. This type of hypothesis does not indicate a cause and

effect. For instance, the precipitation rate affects the rate at which reservoir fills.

h) *Causal hypothesis* – unlike an associative hypothesis, a causal hypothesis aims to clearly show the changes in the independent variable will cause changes in the dependent variable. For instance, increased precipitation increases crop yields.

## VI. Hypothesis Testing

As indicated earlier, a hypothesis is a "*predictive statement, capable of being tested by scientific methods, that relates an independent variable to some dependent variable*."[10] Thus a hypothesis is an assertion validity of which can be objectively tested and verified. In this regard, a crucial idea within hypothesis testing, particularly in quantitative research, is what called a *level of significance*. The level of significance provides statistical basis for decision to accept or reject the hypothesis.[11] Level of significance thus indicates the maximum probability of researcher rejecting a null hypothesis in instances when it is true. For instance, if the significance level is 5%, then it means that the researcher is comfortable to take as high as 5 per cent risk of not accepting a null hypothesis when it is true. As a result, significance level is determined in advance of hypothesis testing.[12]

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[10] CR KOTHARI, RESEARCH METHODOLOGY, METHODS AND TECHNIQUES, 348-49 (New Age International Publishers 2nd edn. 2004).

[11] FRANCIS JEGEDE, DOING A PHD IN THE SOCIAL SCIENCES: A STUDENT'S GUIDE TO POST GRADUATE RESEARCH AND WRITING, 188 (Routledge 2021).

[12] BRIDGET SOMEKH AND CATHY LEWIN (EDS), RESEARCH METHODS IN THE SOCIAL SCIENCES, 224 (Sage Publications 2005).

Another important concept is of test of hypothesis or *decision rule*. Decision rule is the rule decided in advance by the researcher for accepting one hypothesis ($H_0/H_1$) over the other ($H_1/H_0$). This essentially is the criteria for accepting or rejecting a hypothesis. For instance, a particular batch of items is good if certain number of items within it is good. One then has to decide the number of items to be tested from the batch to decide whether the batch is good or not. This would then be the decision rule.

In hypothesis testing one often comes across the term *errors*, in particular Type I and II errors. There is a possibility that the researcher may reject a null hypothesis when it is true or accept a null hypothesis when it is not true. The first scenario is referred to as a *Type I* error, while the second scenario is understood as a *Type II* error.[13] To put differently, Type I error implies non-acceptance of hypothesis which ought to have been accepted, on the other hand Type II implies acceptance of a hypothesis which ought to have been dismissed. Therefore, significance level is maximum probability of committing a type I error (often referred to as alpha level). So, if the significance level is 95%, the alpha level would be 0.05, which would suggest that the researcher is 95% confident of a right decision as regards the rejection or acceptance of the null hypothesis. This could also be understood as the confidence level in statistical tests.[14]

Another important aspect in this regard is the procedure for testing of hypothesis, which includes all steps that are taken for either rejecting or accepting a null

[13] FRANCIS JEGEDE, DOING A PHD IN THE SOCIAL SCIENCES: A STUDENT'S GUIDE TO POST GRADUATE RESEARCH AND WRITING, 189 (Routledge 2021).
[14] *Ibid.*

hypothesis. This involves making a formal statement of the null hypothesis and alternative hypothesis; selecting level of significance, (which depends on the size of samples, magnitude of difference between sample sizes, variability of measurements within the sample, etc.); determination of appropriate sampling distribution; selection of random sample to provide empirical data (where necessary); calculating the probability of divergence of sample result from expectations and finally comparing the probability thus calculated with the significance level to accept or reject the null hypothesis.[15]

The above is by no means a comprehensive coverage of all aspects of hypothesis testing, however as indicated earlier, only those components relevant to legal research have been included.

## VII. Conclusion

Research of any nature has certain crucial steps that it must adhere to. One such step involves formulation of an appropriate hypothesis. A hypothesis is a proposition/ generalisation/ assumption/ tentative statement that is objectively tested through the proposed study. Formulation of hypothesis is often considered to be the second phase of research, preceded by theory and succeeded by data collection, data analysis and results. It emerges at an early stage of research after a thorough literature survey, and tested rigorously later through collection and analysis of data. Hypothesis proceeds from the theory through deduction, in other words while the theory is general, and hypothesis would be specific, which

[15] CR KOTHARI, RESEARCH METHODOLOGY, METHODS AND TECHNIQUES, 192 (New Age International Publishers, 2nd edn. 2004).

then operationalises the data collection. Therefore, they must be clearly formulated and specifically expressed. Once the analysis of data has been conducted and results drawn therefrom, one returns to the hypothesis that is the results (empirical) would be compared with the theoretical hypothesis, to confirm or reformulate the initial theory. "*A well-established hypothesis is known as a theory, and a true and tried theory, a law*."[16] Thus as can be seen a hypothesis plays a pivotal role in the overall research, as a result of which a particular attention must be paid to its formulation.

[16] L.V.Redman and A. V. H, *The Romance of Research*, WILLIAMS & WILKINS CO. 7 (1933).

## Chapter - 9

# SAMPLING TECHNIQUES IN RESEARCH METHODOLOGY: AN ANALYSIS

*Arun Kumar Singh**
*Umeshwari Dkhar***

## I. Introduction

Research is a process of discovering new facts, knowledge and to find answer of a research question. The word "research is having two parts *re* (again) and *search* (find) which denotes an activity to look into an aspect once again or looking for some new information[1]. According to the Advance Learner's Dictionary of Current English, the term Research means "a careful investigation or inquiry specially through search for new facts in any branch of knowledge"[2] The 'Encyclopaedia of Social Science (D. Slesinger and M. Stephenson) prescribes that research is "the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, whether the knowledge aids in construction of theory or in the practice of an art."[3]

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1 *Researching for Hospitality and Tourism Management, Research: Meaning, Types, Scope and Significance*, URL: https://www.uou.ac.in/sites/default/files/slm/BHM-503T.pdf (Last visited on February 28, 2022).

2 SHIPRA AGARWAL, LEGAL RESEARCH METHODOLOGY, 1 (Allahabad Law Agency, Mathura, 2nd edn. 2012).

3 D. SLESINGER & M. STEPHENSON, ENCYCLOPAEDIA OF SOCIAL SCIENCE (1930).

Lundberg, says that "research is a method sufficiently objective and systematic to make possible classification, generalising to extend or verify knowledge, whether that knowledge aids in construction of theory or in practice of an art."[4]

Burns defines research as a "systematic investigation to find answer to a problem".[5]

Redman and Mory define research as a "systematized effort to gain new knowledge"[6]

Clover and Balsely defines research as, "The process of systematically obtaining accurate answers to significant and pertinent questions by the use of the scientific method gathering and interpreting information"[7]

Thus, Research is the search for knowledge through objective and systematic methods of findings solution to the problem through various research questions, further, an original contribution to the existing knowledge of the present subject.

In order to answer the research questions, it is doubtful that researcher should be able to collect data from all cases. Thus, there is a need to select a sample.

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4 S.R MYNENI, LEGAL RESEARCH METHODOLOGY 180 (Allahabad Law Agency, Mathura, 6th edn. 2017).

5 *Research: Meaning, Importance, Characteristics*, URL: http://www.jnkvv.org/PDF/07042020143832Ext.pdf (Last visited on February 29, 2022).

6 *Ibid.*

7 Shivaji University, Kolhapur, Centre for Distance Education, *Research Methodology*, URL: http://www.unishivaji.ac.in/uploads/distedu/Home/SIM%202015/M.%20Com.%20II%20Research%20Methodology%20sem.%20III%20all.pdf (Last visited on 3 March, 2022).

And also, to carry out a proper research study, one needs to acquire enough information and collect enough data on the subject which will further be examine, analyse and evaluate as per the need of the research. Sampling techniques are one of the components of research which play great role in validity of the research result. Without good sampling good research conduction is impossible. It has two major types namely probability and non-probability sampling. As there are different types of sampling techniques/methods, researcher needs to understand the differences to select the proper sampling method for the research. This paper presents the steps to go through to conduct sampling. Furthermore, the paper highlights different types of sampling techniques and methods. And also, it highlights the common problems encountered with sampling. The methodology that has been adopted for the discussion is doctrinal which is based on primary and secondary sources.

## II. Methods of Data Collection

There are two methods of data collection, i.e., Census Method and Sampling Method.

### A. Census Method

The **census method** is also known as a **complete enumeration survey method** wherein each and every item in the universe is selected for the data collection. Here the universe may constitute a particular place, a group of people or any specific Locality which is having complete set of items and which are of interest in any particular situation.[8] This method is generally used by the

[8] https://businessjargons.com/census-method.html (Last visited on 7 March, 2022).

government in connection with the national population for census purposes. Census method is a statistical investigation in which the data are collected from each and every element of population.[9] This technique is also known as 'complete enumeration or complete survey" this process is useful when case intensive study is required or the area is limited. As per as advantage of this method is concerned, it provides intensive and in-depth information that cover many facets of the problems. In this method every unit of population or universe is taken into account, thus the conclusion is more accurate and reliable[10]

**B. Sampling Method**

Sampling is a foundational step in conducting any type of thorough research. Methodologically, it involves the identification of where the study takes place. For example, whether is going to be done in laboratory or with the population. Actually, sampling is the process of selecting a group of individuals from a population to study them and characterize the population as a whole. Thus, there is a need to select a sample. As there are different types of sampling techniques/methods, researcher needs to understand the differences to select the proper sampling method for the research. Most research study is based on sample. As, it is simply not possible to gain data from every available source, therefore, sampling is needed in almost all form of data collection. Sampling is the process of selecting for study a portion of the group who will represent the entire population.[11]Hence, when a small group is

[9] Sanjeev Kumar, *Theory of sampling*, URL: https://www.ilkouniv.ac.in (Last visited on February 28, 2022).

[10] Paul J. Lavrakas, *Encyclopedia of Survey Research Methods*, URL: https://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n61.xml (Visited on March 3, 2022).

[11] Gaganpreet Sharma, *Pros and Corn of different sampling techniques,* IJAR 2 (2017)

selected as representative of the whole, it is known as sample method and the method used to select this sample is known as sampling techniques.[12]According to Goode and Hatt, "Sample is a smaller representation of large whole". Nan Lin defines sample as a "subject of cases from the population chosen to represent it".[13] Hence, the entire group from which the sample has been drawn is known as 'Universe or Population' and the group selected for study is known as sample.[14]

According to Wimmer and Dominick, "A sample is a set of population that is taken to be representative of the population"[15]

Sampling is used when the researcher needs to collect or gather information from a wider area and in this technique, the researcher does not need cent percent accuracy.[16]

So far as advantage of sampling method is concerned, it is a time saving method. In this technique smaller number of units is studied in sampling methods and naturally it requires much less time than in census method[17]. This technique saves time not only in conducting the inquiry but also in processing, editing and analysing the data. It is also less expensive as it requires a small staff to collect the data and it requires less money. It helps in a detailed study because when the units are less in numbers,

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[12] *Ibid.*
[13] See *Supra note*, 2 at 138
[14] *Ibid.*
[15] Nsikan Senam & Uwem Akpan, *The Survey Communication Research*, IJER 2 (2014)
[16] S.R MYNENI, LEGAL RESEARCH METHODOLOGY 181 (Allahabad Law Agency, Mathura, 6th edn., 2017).
[17] SHIPRA AGARWAL, LEGAL RESEARCH METHODOLOGY 138 (Allahabad Law Agency, Mathura, 2nd edn., 2012).

more minute observations and detailed study is possible. In sampling method, we can calculate the sampling error and make the study accurate. Apart from the above, a small sample is usually more convenient from an administrative point of view as the units of sample can be easily manageable. When we compare the census method with present method, we get that the universe is too vast and geographically scattered so the census method is not very feasible because every unit cannot be contacted. So, the sampling method is more convenient, because of useful statistical tools, it has its scientific base.

### C. Types of Sampling

Sampling methods are broadly divided into two types: (A) Probability sampling and (B) Non-probability sampling.

#### (i) Probability Sampling

Probability sampling is based on random selection of the unit from the population. In this process the research is carried out in such a way that every unit in the population has the probability of being included is the same. Probability sampling can be carried out through different methods and each methods haves its own strength and limitation. The probability sampling can be done in following ways.

**1. Simple Random Sampling:** Simple random sampling is the process of selecting a sample from a fixed population in such a way that every unit from the population is given a chance of being selected as a sample and represent their own groups. For this reason, Simple random sampling is also known as “Chance Sampling”. There are four methods

use to draw out a sample on random sampling which includes; Lottery methods, Random Numbers, Selection from sequential list and Grid System. The advantages of this sampling are; its free from bias, it is simple to administer and it is generally more representative.

**2. Systematic Sampling:** In Systematic sampling the populations are accurately listed in such a way that each element of the population can be distinctively identify by its order.[18] This method is also known as 'probability selection method'. In this method of sampling, the first unit is selected with the help of random numbers, and the remaining units are selected automatically according to a prearranged pattern.[19] So far as advantage of this method is concerned, the reliability of the information obtained from systematic sampling is adequate, its time and money saving process. And also, It is easier to draw a sample and often easier to execute it without mistake.[20]

**3. Stratified Sampling:** In stratified sampling, the population is firstly divided into a number of homogeneous groups also known as "strata" or classes for example, age, sex, education level, etc. then a simple random sample is taken from each strata and such sample are then brought together to form the total sample. This is a very useful technique as there is greater representativeness of the sample is assured and the mistakes that occur in simple random are avoided. Also, greater precision can be achieved with fewer cases in case of more homogeneous

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[18] *Systematic Sampling*, URL: http://home.iitk.ac.in/~shalab/sampling/chapter11-sampling-systematic-sampling.pdf, (Last visited on February 28, 2022).

[19] SHIPRA AGARWAL, LEGAL RESEARCH METHODOLOGY 147 (Allahabad Law Agency, Mathura, 2nd edn., 2012).

[20] *Ibid.*

population. Besides, the cost in term of money and the energy in term of interviewing respondents due to stratification can be reduced and more reliability can be secured.[21]

**4. Cluster Sampling:** In cluster sampling researchers divide the population into multiple groups (cluster) for research. The researcher then selects random groups with a simple random or systematic random sampling technique for data collection and data analysis. For example, in a survey of students from city, we first select a sample of schools, then we select a sample of classroom within the selected schools and finally we select a sample of student within the selected classes. Thus, cluster sampling is an effective design for obtaining specified information at minimum cost.

This method can be very useful because when sampling from all elements is not available, we can resort only to the cluster sampling. Cluster sampling is economically cheaper. There will be saving of time. The field work period will also be lesser.

**(ii) Non-Probability Sampling**

Non-Probability sampling is defined as a sampling technique in which the researcher selects samples based on the subjective judgement of the researcher rather than random selection. It is less stringent methods. This sampling method depends heavily on the common sense, experience, intention and expertise of the sampler. However, the main defect of this technique is that they are

[21] S.R MYNENI, LEGAL RESEARCH METHODOLOGY 189 (Allahabad Law Agency, Mathura, 6th edn., 2017).

biased samples.[22] Further, non-probability sampling is a sampling method in which not all members of the population have an equal chance of participating in the study, unlike probability sampling. Researcher uses this method in studies where it is impossible to draw random probability sampling due to time or cost considerations.

Following are some of the techniques that represent the non-probability sampling:

**1. Convenience Sampling:** In this technique samples are selected according to the convenience of the researcher. Hence, no planned effort is made to collect information.[23] The researchers choose these samples just because they are easily available. Ideally, in research, it is good to test a sample that represents the population. However, in some research, the population is too large to examine and consider the entire population. It is for this reason that the researcher relies on convenience sampling. The good things of this technique are that it is fast as well as cost-effective and easy availability of sample.

**2. Judgemental Sampling:** In this method, the researcher selects the samples based purely on the knowledge and credibility of the researcher. This type of sampling is also known as purposive sampling and authoritative sampling. In this sampling, the researcher chooses only those samples that they deem fit to participate in the research study. But the disadvantage part of this sampling technique is that it reflects pre-conceived notions of the researcher in the selection of the sample as it can influence the results. Hence, this sampling technique involves high

[22] *Id.*, 190.

[23] H.N TIWARI, LEGAL RESEARCH METHODOLOGY 204 (Allahabad Law Agency, Mathura, 2thedn., 2013).

amount of ambiguity.[24] Besides above disadvantage, it has certain advantages also, like it consumes minimum time for execution. It allows researchers to approach their target market directly. Also, it provides almost real-time results.

**3. Snowball Sampling:** Snowball sampling or chain-referral sampling is defined as a sampling technique in which the target samples are not easily available.[25] In Snowball sampling, the researcher identifies one or more sample from the population of interest. For example, in case of Acid attack few acid attack victims are selected for sample study and after they have been interviewed, they are used as informants to identify and refer to others acid victims. Thus, snowball sampling is useful in cases where there is no pre calculated list of targeted population. Immense pain is involved in contacting members of the targeted population. For example, 'rape victims' who are under the targeted population of research do not contribute or cooperate due to a social stigma attached to them. Apart from the above, this technique has certain advantages, such as it is quicker to find samples. And also, it is cost effective.

**4. Quota Sampling:** Quota sampling is defined as a sampling method in which researchers create a sample that represents a population.[26] Researcher choose these

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[24] Shona Mc Combes, *Sampling Methods Types and Techniques Explained*, URL: https://www.scribbr.com/methodology/sampling-methods/ (Last visited on March 3, 2022).

[25] Mahin Naderifar, Hamideh Goli and Fereshteh Ghaljaie, *Snowball Sampling: A Purposeful Method of Sampling in Qualitative Research*, URL: https://services.brief.land/cdn/serve/3144b/10435997ee0bb76718ccffa29290da6ef9fa3036/sdme-14-3-67670.pdf. (Last visited on March 2, 2022).

[26] Kalpana V. Jawale, *Methods of Sampling Design in the Legal Research: Advantages and Disadvantages*, 2(6) IIRJ (2012), URL: http://www.oiirj.org/oiirj/nov-dec2012/23.pdf (Last visited on March 3, 2022).

samples according to specific characteristic, like age, place of residence, gender, class, profession, marital status etc. Therefore, in this technique, the researcher decides and creates quotas so that the selected sample can be useful in collecting data.[27] The positive point of this technique is that it derives the benefits of stratification without the high field-costs. There is freedom to the enumerators to select the samples. The estimated can be obtained quickly and cheaply and the service of the enumerators can be easily exploited.

## III. Conclusion

From above discussion it appears that sampling helps a lot in research. It is one of the most important factors which determine the accuracy of the research. Sampling not only makes your data collection possible but it can also make more efficient use of the time. However, choosing correct sampling for research is vital because if anything goes wrong with the sample then it will directly reflect in the research result. As for as advantages and disadvantages of the probability and non-probability sampling techniques are concerned both methods are equally valid if they fit the purpose for which they are being used. The researchers can increase the robustness of their research by making the best use of both techniques.

[27] C.A.Moser, *Quota Sampling, Journal of the Royal Statistical Society*, 115 No. 3 URL: https://www.jstor.org/stable/2980740 (Last visited on March 4, 2022).

## Chapter - 10

# THE PLACE OF HYPOTHESIS IN A LEGAL RESEARCH: A SUCCINCT APPROACH

*Chiradeep Basak**

> *"My subject is jurisprudence, which lies between two disciplines- law and philosophy- and often falls between two stools. I shall report about research in law, though I shall make the point that legal research doesn't differ from academic work in moral and legal philosophy as much as one might think"*
>
> *Ronald Dworkin*

## I. The Ideas of Whitney–Dewey-Kelly

In the ocean of legal research and studies, many legal scholars have attempted to bring an exhaustive and scholastic meaning of hypothesis. With the inception of an identified problem one proceeds with a close and critical inquiry in understanding principles and facts. Based on a diligent approach and applied tools of data analysis, one proceeds to the ultimate objective to test or verify its tentative analogy. The analogy that should be based on a reflective thinking, as enumerated by John Dewey and further improvised by T L Kelly.[1] Reflective Thinking as

* West Bengal Education Service, Government of West Bengal.

1 John Dewey, *How we think* (DC Health and Co., 1933), 14, 72 at 9. Also *See* T.L. Kelly, Scientific *Method: Its functions in Research and Education* (McMillan Co., 1935) and F.L. Whitney, *The Elements of Research* (Revised Ed., Prentice- Hall, 1948)., at 3.

elaborated by these scholars involves six steps, which includes:-

- Realization of an existing problem and this problem should be due to certain circumstances which can be due to incoherence and certain existing grey areas;

- On realization, the existing problem gets articulated in form of a statement (commonly known as the problem statement);

- The third step has a tentative inference called 'Hypothesis', which is the crux of this brief chapter. This possible solution or suggested theory plays a key role in the entire paradigm of research;

- To attain the end, the means and methods play a pivotal role. In that process, the proposed idea gets further elaborated by collection of data;

- The subsequent step of experimental verification of the hypothesis enables the researcher to corroborate and then deduce its conclusion;

- Thereafter in the final step (as proposed by T L Kelly) the new proposed solution to the identified research problem will be appraised. Keeping in mind the future needs.

In these aforementioned steps, the formulation of research hypothesis involves a very rigorous and careful deductive and inductive reasoning. This process of reasoning and subsequent verification has been the core aspect of hypothesis in all paradigms of research.

However, the field of legal research is not as simple as it is with other subjects of humanities and social sciences.

## II. Hypothesis: The Prime Element in Research

In general connotation a hypothesis is a tentative assumption that is required to be proved or disproved. However, from a researcher's perspective, a hypothesis aims to resolve a formal question by setting forth a proposition as an explanation for the occurrence of some investigation or accepted as highly probable in the light of established facts.[2] Quite often a research hypothesis is a predictive statement, capable of being tested by scientific methods, that relates an independent variable to some dependent variable.[3]

A hypothesis should possess certain features, which includes:

- It should be precise and understandable. It should rather be in simpler terms;
- It should be reliable and be capable of being tested by application of several research methods;
- A rigorous literature review and prior research in the said field should be done to articulate a testable hypothesis;
- There should be a causal relationship between the variables of the hypothesis;
- It is better to have a hypothesis that is specific, simpler, significant and consistent with existing facts;

[2] C R Kothari, *Research Methodology: Methods and Techniques,* NEW AGE INTERNATIONAL PUBLISHERS 184 (2nd edn. 2004).

[3] *Ibid.*

- A hypothesis should be testable and acquiescent to such testing within the specific time period;
- A research hypothesis should aim to add value(s) to the existing literature on the said topic. It should be capable to deduce the original research problem with discreet empirical reference.

These features of hypothesis are relevant in general context and for legal research as well.

In legal research that contains statistical analysis, there should be a null and an alternative hypothesis. When in a research, there are two methods which are equally good on assumptions, it is termed as null hypothesis while if one method is superior than the another, then it is termed as alternative hypothesis. The null hypothesis is generally denoted by *H*0 and the alternative hypothesis as *Ha*. If our sample results do not support this null hypothesis, we should conclude that something else is true. What we conclude rejecting the null hypothesis is known as alternative hypothesis.[4] As pointed out by Kothari[5],

| | | |
|---|---|---|
| *Alternative hypothesis is usually the one which one wishes to prove and the null hypothesis is the one which one wishes to disprove. Thus, a null hypothesis represents the* | *If the rejection of a certain hypothesis when it is true involves great risk, it is taken as null hypothesis because then the probability of rejecting it when it is true is a (the level of* | *Null hypothesis should always be specific hypothesis i.e., it should not state about or approximately a certain value.* |

[4] *Ibid.*
[5] *Id.,* at 186.

| | | |
|---|---|---|
| *hypothesis we are trying to reject, and alternative hypothesis represents all other possibilities* | *significance) which is chosen very small* | |

**III. The Means to Reach the End**

To test the hypothesis, one must go by a systematic procedure. At last, the main point is to either accept or not to accept the null hypothesis. Therefore, to attain this end, there are certain step by step processes:

i. Articulation of a formal statement, keeping the research problem in mind;

ii. After formulation of the formal statement, the next step will involve selection of a pre-determined margin of significance of the hypothesis. Following which one must decide the appropriate level of sampling required to test the hypothesis. After a hypothesis has been formulated, one must decide which entities to sample in order to test the hypothesis;

iii. The next step in the research design is to determine how the variables are to be measured or, in other words, how the entities are to be positioned on each of the variables. For example, If one has a hypothesis about the effect of a statute (e. g., a statute establishing a public-defender system) or a judge-made law (e. g., the exclusionary rule as applied to illegally seized evidence), the measurement step may involve preparing a

meaningful questionnaire or observation check-off list and deciding how it is going to be administered;[6]

iv. The research design should systematically plan how the data compiled will be analyzed to determine whether or not the hypothesis has been confirmed[7]

v. In accordance with the sampling techniques, the measurement techniques, and the plan of analysis developed in the research design, data should now be compiled for the purpose of testing the hypothesis or hypotheses. The data may be obtained from library materials, interviews, mailed questionnaires, observation, contrived experiments, court records, or from any other relevant sources.[8] Once the appropriate sampling distribution is decided, one may step up to select a random sample and thereafter calculate an appropriate value from the selected sample data. The data so collected will be from the selected sample. There are several methods employed to collect data, that includes: questionnaires, observation, survey, interview (structured, semi structured or unstructured), focus group discussion, sampling (snowball, clustered, stratified, systematic random sampling) and case study method;

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[6] Stuart S. Nagel, *Testing Empirical Generalizations in Legal Research*, 15 J. LEGAL EDUCATION 374 (1962).
[7] *Id.,* at 370.
[8] *Id.,* at 373.

vi. The next step will involve the calculation of the probability to check if the null hypothesis is correct. Thereafter the probability will be compared to either accept or reject the null hypothesis.

Hence, the formal statement or tentative proposition, whose validity was unknown, will be determined and tested by application of several research methods. After all, a hypothesis when tested gives a clear objectivity in a study and enables us to formulate a theory, which thereafter will be furthered by subsequent research and that is how we extend the horizon of our study. So, to test a hypothesis, one has to first put up an assumption and post such formulation, once has to collect the necessary and relevant data. Thereafter in the last phase of research, these data will be analysed to come to a conclusion and see if the tentative proposition is true.

As mentioned earlier, a hypothesis is a tentative assumption that has a probability of being incorrect. Also, there is a possibility of errors in testing the hypothesis. This can happen when there is an error in the sampling, design, method of data collection or even wrong application of statistical formula. These reasons can result in incorrect conclusion.

Rejection of a null hypothesis when it is true. This is known as a Type I error.[9]

Acceptance of a null hypothesis when it is false. This is known as a Type II error.[10]

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[9] RANJIT KUMAR, RESEARCH METHODOLOGY: A STEP-BY-STEP GUIDE FOR BEGINNERS, 84 (3rd ed. SAGE 2011).

[10] *Ibid.*

If the null hypothesis is the hypothesis of no scientific effect, then it is more important (sic) not to reject it wrongly than to accept it falsely, i.e. better to err on the side of knowledge revision-caution than to wrongly assert evidence for the presence of scientific causal mechanisms where there are none.[11] The testing of empirical generalizations is not complete until a tested or untested explanation is offered for why the relationship found exists, or for why the relation hypothesized but not found does not exist.[12] One should attempt to account for not only why the relation went in the direction it did, but also why it was not a stronger relationship.[13]

## IV. Hypothesis Concept: A poor fit in legal research?

Of course, legal scholars can formulate hypotheses. Indeed, some commentators list suggested one-sentence claims, such as the following examples provided by Eugene Volokh:

1. 'Such-and-such a law is unconstitutional.'

2. 'The legislature ought to enact the following statute.'

3. 'Properly interpreted, this statute means such-and-such.'

4. 'My empirical research shows that this law has unexpectedly led to....'

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[11] Peter McBurney & Simon Parsons, *Determining Error Bounds for Hypothesis Test in Risk Assessment: A Research Agenda*, 1 LAW, PROB. & Risk 18 (2002).
[12] See *Supra* note 6, at 369.
[13] *Ibid.*

5. 'Viewing this law from a [feminist / Asian studies/ Catholic / economic] perspective leads us to conclude that the law is flawed, and should be changed in such-and-such a way.'"[14]

All these examples are of course legitimate claims or propositions. However, arguably the extent to which these are 'testable' differs. For example, the first claim - the claim that a certain law is unconstitutional - seems different in nature to the second claim, that legislature ought to enact a certain statute. The first claim can, within limits, be proven right or wrong, while the second claim cannot.[15]

In any dealings with law, we make certain choices - we may give a certain term a certain definition instead of another possible definition. Or we may view one legal outcome as more desirable than a competing alternative. By approaching such choices with a clear predetermined hypothesis in mind, we are ill-equipped indeed to do so with objectivity.[16]

Another possible reason why legal scholars show such affection for the hypothesis is rooted in insecurity. Legal scholarship is not scientific in the same sense as the natural sciences, and it is the research laboratories of industry that have 'set the psychologic pace for scientific endeavour'.[17]

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[14] Eugene Volokh, *Writing a Student Article*, 48 J LEGAL EDU, 247 (1998).

[15] Dan Jerker B. Svantesson, *The Hypocritical Hype about Hypothesis*, 39 ALTERNATIVE L.J. 259 (2014).

[16] *Id.,* at 260.

[17] Felix Frankfurter, Karl N Llewellyn and Edson R Sunderland, *The Conditions for and the Aims and Methods of Legal Researc*h, 6 AMERICAN LAW SCHOOL REVIEW 663 (1926-1930)

Hypothesis can also be drawn in a qualitative research where the emphasis of the study is to describe, explore and understand a particular phenomenon by applying specific subjective scales and process. However, in a qualitative research the level of specific approach to test a hypothesis might not be adhered to by the researcher and on account of which, it becomes quite difficult to reach the end of the research but it doesn't imply that a hypothesis cannot be articulated in a qualitative research. The fact is that in absence of a non-specificity angle, the pragmatic value of the hypothesis might take a fall. In qualitative research, because of the purpose of an investigation and methods used to obtain information, hypotheses are not used and almost no importance is given to them. However, in quantitative research, their use is far more prevalent though it varies markedly from one academic discipline to another and from researcher to researcher.[18] In core legal research, there are several opportunities and challenges. Most of the time, the legal researchers heavily rely on research methodology applied for social sciences study but a core legal research is quite different from any other streams of social sciences and even humanities.

Unlike socio-legal research, a core legal research might involve extensive qualitative approach where legal doctrines and theories are the core of studies. In many legal research, the judgments are analysed and in many, even judges' and jurimetrics are explored. It is quite possible to even draw a quantitative approach in core legal research by drawing a sample from an entire universe of legal instruments so as to understand the changing trend of the judicial minds or even legislative ones. Such

[18] See *Supra* note 9, at 89.

systematic and scientific approach can have a hypothesis or hypotheses. For example, the implication of sustainable development in the judicial trends of India. In such case, a researcher can pick the sample of several landmark judgments of Supreme Court of India from a specific timeline and further analyse the change in the approach of fundamental rights to pollution free environment to even the dynamic approach of rights of river and its standing in a court of law. Hence, it will be quite wrong to point that hypothesis is a poor fit in legal research. In fact, one must also keep in mind that hypothesis is not an essential element of a study as in several legal research that are primarily doctrinal in nature, are guided by research questions while some legal research take recourse to both hypothesis and research questions. Some authors have pointed out that legal scholars' cling to the notion of a necessary, almost almighty hypothesis.[19] Some even believes that the legal academics have stopped believing in the magic of the hypothesis in its technical sense but continue to use it as it a concept cemented in other disciplines.[20] In fact, an alternative has been put forward, which moots for a departure from hypothesis and rather delves into the terrain of clearly and neutrally defined research question or task.[21] It is then this research question or task that should provide the necessary guiding core. It guides our decision as to what we read and write on, and it is that question or task that will delineate what we focus our thinking on - it ought to provide direction, not restrictions.[22] Without condescending and depreciating the value of research question, in the

[19] See *Supra* note 15, at 261.
[20] *Ibid.*
[21] Dan Svantesson, *A Legal Method for Solving Issues of Internet Regulation* 19(3) INT. J. LAW INF. TECHNOL 243 (2011).
[22] See *Supra* 15, at 261.

post-modern context of legal research, hypothesis can very much be articulated like any other streams of study and this has been clearly amplified with an example in earlier part of this paragraph.

**V. Some generic categories of Hypothesis**

Across several streams and discourses, besides Null and Alternative Hypothesis, the notion of hypothesis has also been classified into several other types. They are:

- Working Hypothesis;
- Scientific Hypothesis;
- Statistical Hypothesis;
- Directional Hypothesis;
- Non-directional Hypothesis;
- Hypothesis based on abstractness (*Goode & Hartt*);
- Descriptive Hypothesis.

*Working Hypothesis* as the title suggests is the form of hypothesis those are based on the primary and preliminary assumptions that are drawn in absence of sufficient facts and information. The working hypothesis is in fact the early stepping stones to design the final research plan to reach to the ultimate research hypothesis.

Although distinctly categorized by many but all genuine research hypothesis is *scientific hypothesis* because a hypothesis derives its origin from sufficient empirical and theoretical data. In fact, Statistical Hypothesis can be categorized as a specific form of hypothesis where statements are reduced to quantifiable figures and these figures (in form of variables) are exclusively calculated using statistical and mathematical

formulae to test the hypothesis. It is not necessary that all forms of hypothesis will be statistical in nature. In fact, from statistical significance, the hypothesis is further classified into two types (as mentioned earlier): *Null* & *Alternative Hypothesis*. Further, the alternative hypothesis can be directional and non-directional. In former, the hypothesis specifies the direction of a prospective finding. In certain instances, these forms of hypotheses are used to examine the causal relationship among the variables rather than comparing them in groups. It stipulates the direction of the expected differences or even relationships. While a non-directional hypothesis has no fixed and certain direction of prospective findings. The researcher in such situation dwells in with open mind with no idea of prediction from pre-existing literature. In such hypotheses, the term 'difference between' is commonly used. These describe, delineate or give an account of various characteristics of objects by closely observing what is what. Such hypothesis enables us to grasp the phenomenon under study.[23]

Moreover, Goode and Hartt in their work have categorized hypothesis in three types based on the level of abstractness. They are:

- Hypothesis based on Common sense propositions- these hypotheses are usually based on common sense perspectives with well-established relationship. For example, bad investments yield bad returns;

[23] Vani Bhushan, *Concept of Hypothesis- Its sources and significance in research development: an overview*, URL: http://oldsite.pup.ac.in/e-content/law/CONCEPT_OF_HYPOTHESIS_Dr_Vani_Bhushan_Law.pdf accessed on January 3 (Last Visited on 12 January 2023).

- Hypothesis with Complex propositions- these tentative statements are little complex in nature which requires a close approach and cannot be generalized like common sense propositions. For example, the rate of goitre is predominately higher in hilly areas;
- Hypothesis with very complex propositions is usually drawn to describe causal relationship between two or more variables. These variables can be dependent and independent in nature.

In framing and formulating hypothesis, a researcher encounters certain challenges if there is no clear theoretical frame. Due to unclear theoretical framework, it becomes quite difficult to utilize that. Furthermore, failure to acquaint with existing research techniques also makes it difficult for the researcher to phrase the hypothesis.

**VI. Concluding Remarks**

Legal research is a systematic technique to understand law with an objective to extend its horizon. It is very significant for the society because law acts within a societal frame and both law and society are interrelated. The elements of legal research had its own distinct values and hypotheses are crucial tools in any research. Hypothesis guides the researcher with a specific direction by bringing clarity to the research problem. It is not necessary that a hypothesis should be right because it is after all a tentative statement which may be rejected or accepted but it gives a significant essence and guidance to explore, probe and outline the tools required to understand, analyse and interpret the collected data. It is hypothesis that makes research more prolific and precise.

## Chapter - 11

# USE OF INFORMATION TECHNOLOGY IN LEGAL RESEARCH

*Archa Vashishtha**

## I. Introduction

The development of cyber space and Information and communication technology (ICT) has brought a revolution in almost every field and research is no exception. ICT and cyber space are two terms, the use of which both in literature and actual use have grown tremendously since their inception. The importance can easily be deduced from the fact that UN in its various documents have discussed about right to internet access. The increased use of these mediums especially in the Covid times have converted them into the basic essentials of life, it's not that we were not earlier using them but now the reach has increased manifold. With classes of small little children taking place online, to ordering groceries though apps, to conducting meetings on the net and important rituals taking place online we seem to have now seen it all.

Before moving forward let us first discuss meaning of some of the basic terms that we use daily like cyber space, Information Technology etc. Cyber space is

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basically an umbrella term or can be said to be a major term for explaining the concept of its components such as information and communication technology like virtual reality, telecommunications etc. When we discuss about ICT, we need to talk about two terms IT i.e., information technology and ICT, the addition of communication in ICT is to explain the idea of other tools in IT such as e mails, chat rooms etc. that are widely used for the purpose of communication in the global spheres. IT on the other hand is the study of "design, development, support and management of computer-based information system particularly software applications and computer hardware."[1]

Talking about research, it is considered as scientific and purposeful enquiry of any subject and so is the case with legal research. Legal research is considered to be a "scientific investigation into a legal issue or problem and the process of gathering evidence or information for ascertaining an assumption or verifying some hypotheses."[2] Purpose of all research is to add something to the already existing knowledge, it has to be a scientific enquiry and thus requires a lot of efforts. From the very first step of selecting the problem only the researcher knows where the shoe pinches. Legal research per se becomes all the more difficult because of its intersection with many other disciplines which are considered to be a specialized in themselves as well as because of its philosophical nature. Another feature that makes legal research unique is diversity of resources available, you cannot do research only by referring to legislations, one

[1] Ahmad Rizal, Mohd. Yosuf et al., *The Cyber Space and Information, Communication and Technology: A Tool for Westernisation or Orienatlism or both*, 7(12) JOURNAL OF COMPUTER SCIENCE 1784-1792 (2011).

[2] https://www.iedunote.com/legal-research (last visited on 27 May, 2022).

has to refer to case laws and the available literature on a particular problem. Thus, legal research can be said to be different in many ways then research conducted in other fields.

## II. Need for Information and Communication Technology in Law

The need for computerization for our legal resources is being felt from as early as 1988. In the year 1991 a decision was taken to request National Informatics Centre to take up the responsibility of computerization of Supreme Court and High Court.[3] Section 4 of the Right to Information Act furthered the commitment of the government to make all the legal resources available online as it obligates all the public authorities to provide all the necessary details on their website and computerize all the data capable of being saved on the computer. In the year 2007 a National Policy and Action Plan, has been approved by the government for computerization of all the district courts and the Covid era brought all this into reality.[4]

In a legal system where ignorance of law is considered to be no defence, technology has provided a medium to make law reach all the citizens. The government through its various programmes had tried to make it a reality. Today we have almost every legislation and even the bills available online so that people of India

[3] Rakesh Kumar Shrivastava, Megha Srivastava et al., *Computer Assisted Legal Research with Special Reference to Indian Legal Contents: Retrospect and Prospect in Ranbir Singh, Sri Krishna Dev Rao et al.*, ACCESS TO LEGAL INFORMATION & RESEARCH IN DIGITAL AGE, 52 (National Law University Press 2015).

[4] https://lawcommissionofindia.nic.in/reports/report230.pdf (last visited on 27 May, 2022).

could have a fair idea as to what their representatives are working on. Apart from this many public-spirited persons have started their blogs, you tube channels and podcasts so that law reach masses.

## III. Impact of Information Technology on Conduct of Legal Research

Like all other fields, legal research, education and profession were greatly affected by the introduction of information technology. Talking particularly about legal research, it is an inquiry which is carried on daily basis by judges, lawyers, academicians and of course students to get a deeper understanding of different laws. Generally, research is considered to be a scientific investigation and so is the case of the legal research though unlike other researches it is less technical and its major purpose is to find out philosophical or policy arguments in law. Legal research like any other research is a systematic study for the purpose of developing new knowledge or verifying old knowledge.[5]

The process of legal research depends on the country and the legal system. Generally, it involves tasks such as:

> "(1) finding primary source of law, or primary authority, in a given jurisdiction (cases, statutes, regulations, etc.);
>
> (2) searching secondary authority (for example, law reviews, legal dictionaries, legal treatise, and legal encyclopedias such as American

[5] https://www.iedunote.com/legal-research (last visited on 27 May, 2022).

Jurisprudence and Corpus Juris Secundum), for background information about a legal topic; and

(3) searching non-legal sources for investigative or supporting information."[6]

The growth of World Wide Web has provided a platform to access these legal resources easily at the comfort of our homes. Before that also there were many technical legal resources like CD ROM etc. but they were not easily accessible. Initially what grew is training intensive websites and specialized access tools that slowly grew to inexpensive ways to access all legal data online. Today almost every person in India has access to information available on the internet like judgements available on the court's websites, articles etc.[7] This led many to think that technology will soon lead to Computer assisted legal research or (CALR). CALR as per encyclopedia.com means "technology that allows lawyers and judges to bypass the traditional law library and locate statutes, court cases, and other legal references in minutes using a personal computer, research software or the internet, and an online connection."

Legal research which is always considered to be scientific in nature and therefore generating, collecting and processing of data plays a very important role in the same. Both these functions are made easy with the

[6] Rakesh Kumar Srivastva, Megha Srivastva et al., Computer Assisted Legal Research with Special Reference to Indian Legal Contents: Retrospect and Prospect in Ranbir Singh, Sri Krishna Dev Rao et al., ACCESS TO LEGAL INFORMATION & RESEARCH IN DIGITAL AGE, 49 (National Law University Press 2015).

[7] Ranbir Singh, Sri Krishna Dev Rao et al., ACCESS TO LEGAL INFORMATION & RESEARCH IN DIGITAL AGE, preface (National Law University Press 2015).

introduction of various softwares. Technology today has made not only collection of information easier but the processing of the information collected has also become a very effortless task. ICT technologies used in research includes techniques used for generating data, processing data and converting this data into information then store, retrieve, process, analyze, and transmit this information for the purposes of research. Technologies like internet, satellite communications are but only some of the examples of ICT technologies used for the purpose of research.[8]

The most important step for research is data handling and converting into information due to large number of published data, the handling of the data became an issue for the library people. Tracing the history this large amount of data led to the development of bibliographic and textual data bases on CD -ROM. The internet further revolutionized the subject of information management with the development of online databases. Information retrieval became much easier with the use of these online databases thus greatly helping in research. Though the basic research technique whether following the traditional mode or the use of ICT has remained the same.[9] The use of softwares like Zotero and Mendeley has made the storing and collection of information a seamless task. In fact, that was considered to be one of the most

[8] Dinesh Kumar Saini and Lakshmi Sunil Prakash, *Information Communication Technologies for Research and Academic Development*, available at https://www.researchgate.net/publication/296824045_Information_Communication_Technologies_for_Research_and_Academic_Development (last visited on 27/05/22)

[9] Rakesh Kumar Srivastva, Megha Srivastva et. al., *Computer Assisted Legal Research with Special Reference to Indian Legal Contents: Retrospect and Prospect* in Ranbir Singh, Sri Krishna Dev Rao et al., ACCESS TO LEGAL INFORMATION & RESEARCH IN DIGITAL AGE, 49 (National Law University Press 2015).

tedious tasks for any researcher i.e. writing footnotes have been effortless by this software. With the help of these software a researcher can create their own bibliography on every topic they are working on.

The process of Legal research like all other researches involves quite a few steps. One of these being "Query Formulation, Query Analysis, Formulation of Search Strategy and Search through the database.". At times the user is not very clear about what he wants to research on or type a very wide term for the purpose of searching that may not yield the result he was looking for or bring in very large number of results. When a researcher is researching something online query should be formulated properly after a very careful consideration as to what to do you want from your search.[10] For example if a researcher wants to research on homosexuality and type "cases on homosexuality", he will most probably get the most recent cases and not the history and developments on the other hand if the researcher types "law on homosexuality" he will most probably get the articles and research papers on the topic.

For any major law reform, the following processes are found to be necessary:

" 1. Analytical i.e., finding out the current law;
2. Historical i.e., finding out the historical law in order to understand the philosophy behind the present legal system;
3. Comparative i.e., finding out what the law is in other countries;

[10] *Id.,* at 53.

4. Statistical i.e., collection of statistics in order to know the working of the present group; and
5. Critical, i.e., finding out the defects and suggesting the reforms in the present law."[11]

Each and every aspect of these have been made really easy by the use of information and communication technology. Finding out the current law of our country has always been an easy and not very difficult task moreover the interpretation of these laws as given in various cases can be easily found in various journals and books. The historical and comparative part requires a lot of efforts in the non-technology driven world. Researchers used to visit all the libraries nearby and at times still were not able to get what they were looking for. For example, not every law library may have books dealing with law related to artificial intelligence or cryptocurrency as they are very newly added subject matter in the area of law, moreover the college libraries have their own limitations and they can't provide all newly published books. In these circumstances the internet provides a wide-open source of information to the young researchers to not only find the new area of research but also to find the material in relation to the said topic. By clicking on the websites of legislative departments of various countries, we can not only find the laws of that country but also the latest legal development in the area in the form of case laws or bilateral or multilateral agreements. We talk about the collection of statistical data and its arrangement that has also been made easy by the use of arithmetic power of information technology. As the first four steps were made really easy by the use of information technology the

[11] P.M. Bakshi, *Legal Research and Law Reforms in S K Verma and Afzal Wani,* LEGAL RESEARCH AND METHODOLOGY, 113 (Indian Law Institute 2010).

researchers can now focus and give enough time to the last step of the research.

One of the most striking features of legal research is that it is interdisciplinary in nature meaning thereby the researcher most of the times is not only required to look into the laws also but also the social and political reasons behind them and how well they are applied on the target group. All this process requires information not only from legal point of view but also from the viewpoint of other subjects for example in Intellectual Property Laws or in commercial matters we might have to look from the perspective of a particular industry or the economist or financial expert or the people concerned as the case may be. Trans disciplinary research does not present many problems but it success depends on the depth of knowledge the researcher has on the other subject. [12] One of the major problems with multidisciplinary research is that of data collection and to extend the inquiry beyond the spheres of law, the researcher needs to understand the subject from the perspective of different disciplines. When we search the World-Wide-Web for information on a particular topic or query, we get the perspective of the experts in various fields. Of course, we need to work more for the proper conduct of interdisciplinary research but we can say that the use of internet for the purpose of research has definitely given it a boost.

If I talk about the present situation on the use of technologies in legal research, we are looking forward to the use of Artificial Intelligence for the purpose on daily basis by lawyers for the purpose of litigation. A study

[12] B.S Murthy, *Socio-Legal Research- Hurdles and Pitfalls in K Verma and Afzal Wani*, LEGAL RESEARCH AND METHODOLOGY, 63 (Indian Law Institute 2010).

conducted by National Legal research Inc. shows that lawyers and professionals who use CARA AI complete their research work 24.5% faster than those who use traditional information technology software for research like Lexis Nexis, these results were found consistent though out the project. Even less experienced professionals showed greater efficiency using these research techniques as compared to more experienced seniors. It was found that attorneys who use CARA AI save around 132 to 210 hours per year on legal research. Moreover, the search results are 4.4x less and more relevant. It was highlighted by most of the attorneys that they would have missed many important cases if they had not used the CARA AI. This entire project clearly highlights how helpful AI or for that matter any good technology could be for the purpose of research.[13]

Despite all this, it is worth highlighting that there is a great dearth of search engines dedicated purely to law or dealing Indian legislations and case laws. Though we have subject specific websites which have acquired goodwill in the academic and research field but they can still not be said to something comprehensive of even one particular subject with which they are dealing like 'spicyip'. Moreover, when we say that technology have made comparative research easier it is worth mentioning that this could be possible because of the availability of the foreign laws in various languages including English but the same do not apply to Indian Laws. So, if a foreign student wants to do comparative research with laws of his/her countries with Indian law and he/she is not well versed in English even the use of internet cannot help him

[13] https://www.lawnext.com/wp-content/uploads/2018/09/The-Real-Impact-of-Using-Artificial-Intelligence-in-Legal-Research-FINAL2.pdf (last visited on 27 May, 2022).

much until and unless he/she relies on various websites providing translations which can hardly be relied on in all cases.

## IV. Impact of Information Technology on Quality of Research

It is worth highlighting that the use of information technology has a great impact on the quality of research. The use of IT made checking of plagiarism easy but it also made copying others work really easy as the authors are now required to only copy and paste other's work relevant to their topic. Researchers now have come up with the ways to make sure that they copy others work and are not caught in plagiarism reports like adding quotes, copying only three sentences at one go and making slight grammatical change after few words. This is not a problem only for research institutions as it is leading to the deterioration of the quality of research but it is also a major problem for the authors of the work as it leads to the violation of their copyright in the work. It is because of this reason many new provisions are added in the Indian Copyright Act by the amendment of 2012 that take care of the violation of copyright online. Authors have now started applying digital protection measures to make sure that their work can't be copied also they upload their works only on those websites that apply proper technical protection measures and give due credit to them for their work.

It was initially considered that it will have positive impact as it made numerous research-related task easier first and foremost being typing but that does not happen. One of the best things that happened was the introduction of plagiarism detecting software like 'Turnitin'. Plagiarism

was one of the main problems that research institutions were facing. UGC has now set limits as to what percentage of plagiarism is allowed in any research work. Though this is an appreciated by many but was equally criticized as well, as in all these software footnotes and quotes will also be included in plagiarism reports unless specifically excluded. Self-plagiarism that leads to the creation of without any merit large quantity of literature could also be easily eliminated with the use of this software. Even UGC in its regulations have specifically discussed about self-plagiarism. Thus, we can say that information technology is playing a key role in improving the quality of research.

Today various parameters are used to evaluate the quality of research like impact factor, SCOPUS Index, Web of Science etc. but most of the research institutions are not very transparent against the quality of the research that their faculty and research students conduct. All major research institutions get substantial funding from various government departments like Council for Scientific Research, while funding grants various government and organisations should take into consideration the ranking of institutions, research publications, citations, quality of teaching etc. Excellence should never be compromised in the name of rules and regulations. It is this arena in which ICT can play a major role by increasing the transparency in issuance of grants as well as by providing research facilities to those who really deserve. Covid era has also shown us how we can provide international exposure to the researchers by the use of information technology. [14]

[14] Dinesh Kumar Saini and Lakshmi Sunil Prakash, *Information Communication Technologies for Research and Academic Development*, available athttps://www.researchgate.net/publication/296824045_Information_Comm

## V. Conclusion

The above discussion clearly highlights the fact that Information and Communication Technology has played an important role not only in making the research process easier but also in improving the quality of the research. It has not only made collection of the data but also made the converting of this data into information easier. At the same time, it is worth highlighting that like any other scientific invention information technology has two sides. With all its positives, it has brought some negatives as well by making not only copying of existing research easier but by impacting the quality of the research as well. Moreover, most of our researchers are still not very well versed with the use of these new technological developments. Research institutions and government bodies should come together and organise on regular basis seminars and workshops that keep researchers and academicians update about the contemporary technological developments. At the same time steps should be taken to timely update the websites, with the current developments like "indiacode.nic.in", it is one of the major websites that one refers to for accessing Indian legislations in such cases steps should be taken to update the website the same day when amendments are brought in any legislations or when a new law is passed.

unication_Technologies_for_Research_and_Academic_Development (last visited on 27/05/22).

## Chapter - 12

# ANALYZING THE EARLY PERTINENT STEPS INVOLVED IN THE SOCIO- LEGAL RESEARCH PROCESS

*Bhupal Bhattacharya**

## I. Introduction

The basic elements that build research methodologies are the concepts or proposition. The concepts are the most important and integral part of social research because it is with the concepts that the entire research process would be outlined. It is a significant symbolic component of social scientific language that is proposed. The concepts and propositions explain the relationship underlying principles in characterizing a phenomenon.

The most important part of Research Methodology is to carry out a scientific investigation. The question arises is what is expected in Research Methodology. Methodology is a scientific procedure of finding identifying, selecting, processing and analyzing of the research content. Good research expects to identify the topic and the research area very clearly.

## II. Meaning of the term Research

Research is a systematic approach to obtain and confirming new and reliable knowledge. So, basically

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research is not only about collecting the information, it concerns about collecting the information and thereafter getting the result confirmed[1]. It is pertinent to justify that the knowledge, which a researcher gathers be also reliable.

It is generally known that the entire research process is hard to be accomplished as it goes through a rigorous procedure, and that requires a planned idea in managing the credible information. The created process is a kind of circular idea which further leads to various other queries[2].

The public research is a public road, must have a rigorous objective because it is subject to more scrutiny than coming onto private research. The private research may also be rigorous, but the research of that may be questioned as has been done for some personal interest by the organization/ institution.

Whenever an explanation is offered to a research question, to whatever the events happened, the researcher advances the answer as to what, how and other various meanings to that process. That entire process can be called as research[3]. Summarily, it can be said that whatever steps a researcher has taken going towards his vision, it gives an answer to what, how, and why the things are occurring, and that is basically advancing different

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[1] MAXFIELD, M.G., BASICS OF RESEARCH METHODS FOR CRIMINAL JUSTICE AND *criminology* (Cengage Learning 2015).

[2] James, E.A., Milenkiewicz, M.T. and Bucknam, A., *Participatory action research for educational leadership: Using data-driven decision making to improve schools*, SAGE (2008).

[3] Susman, G.I. and Evered, R.D., *An assessment of the scientific merits of action research*, ADMINISTRATIVE SCIENCE QUARTERLY 582-603 (1978).

kinds of interactions leading to meaningful information advancing the knowledge.

## III. Importance of Research

A research methodology is chosen by the researcher on the basis of the ability to address the key aims and objectives of the research; i.e. answer the key research questions. If the right methodology is chosen and executed according to the standard methodological principles and practices[4], then the study would generate data of some value. Research reports usually present their findings in terms of numbers, figures, and statistics[5]. It can also come from personal experiences depending on what kind of research one is conducting[6].

Research helps in making synthesis of the various steps together to collect information which is very vital for each discipline. The data collection is also not fun. A researcher needs to keep in mind that small particular steps become the part and parcel of the research process. The initiative is called as research if the researcher engages into searching for explanation of the events, the phenomenon, the relationships of different variable and the causes that is what, how and why things occur.

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[4] Scandura, T.A. and Williams, E.A., *Research methodology in management: Current practices, trends, and implications for future research*, *43*(6) ACADEMY OF MANAGEMENT JOURNAL, 1248-1264 (2000)

[5] Carter, S.M. and Little, M., *Justifying knowledge, justifying method, taking action: Epistemologies, methodologies, and methods in qualitative research*, QUALITATIVE HEALTH RESEARCH, 17(10), 1316-1328 (2007).

[6] SARANTAKOS, S., SOCIAL RESEARCH, Macmillan International Higher Education (2012).

## IV. Research Methods and Methodology

The concepts of methodology and the research methods are often getting often intermingled. They are two different things and mostly research methodology has been misinterpreted with the method. Methodology is overall theory and how research should be done. It discusses every aspect of the research process starting from the research question development, collecting the data for processing it finally as to arrive to the result[7].

If without any clear purpose or without having any clear idea, if any researcher intends to press on an issue to solve, that won't be considered as research, for example, if someone intends to buy a land and tries to gather information as to the price of lands of different localities so that the result can best serve his purpose, that won't be considered as research. This idea won't find any prominence into the research community because there is devoid of every purpose; no proper process was adopted to call it research. It needs to fix a set mechanism of parameters on which the information is to be collected and would be simply called as 'just information'.

Research methodology is important in every discipline because method influences results and makes the research comparable, and in many cases replicable, to other field of studies[8]. This process enhances the state of knowledge in a given discipline. The research methods are those tools and techniques that have to be employed in achieving the objectives and functions of research. The

[7] KOTHARI, C.R., RESEARCH METHODOLOGY: METHODS AND TECHNIQUES, New Age International (2004).

[8] LOKESH, K., METHODOLOGY OF EDUCATIONAL RESEARCH, Vikas publishing house (1984).

major objective of research is to discover new paths and verify the old one. The methods are applied in terms of formulation of a hypothesis, the construction of concepts, theories and proposition.

One of the most important sections in a research paper is the methodology section. There are many questions about what which every reader would be interested, such as, what is the main purpose of writing a methodology section? How does this affect the research paper? The methodology section has three main purposes. First is to explain how the experiment was conducted, second is to explain why this particular method was chosen, and third is to briefly explain the limitations that were imposed on that particular project or research paper. Research is basically the synthesis of the information by giving it a concrete shape for future reference. Methodology is the process of collecting data or information on a research topic through observation or experimentation.

**V. Research Methods and Analysis**

While advancing for analysis, the researcher has to identify beforehand what kind of analysis he is going to apply in the research. There are different types of analysis available viz., qualitative, quantitative, experimental, observational, descriptive or otherwise, etc[9]. There is a distinction between the quantitative and the qualitative method of research. In quantitative methods it is a

[9] KOTHARI, C.R., RESEARCH METHODOLOGY: METHODS AND TECHNIQUES, New Age International (2004).

question of either proving the hypothesis or the dedicated statement[10].

By not observing any accepted method of analysis would vitiate the entire effort in getting recognized amongst the research community. If there is no purpose or any clear indication of the objective, that activity won't be considered as research. Following one proper scientific method lays down the procedure for generation of knowledge, and the interface between methodology and method is considered as the philosophy of social research.

Scientific research varies from the physical science which has to be understood in its different perspective[11]. It is having its own construction of knowledge. Sociology or social research is not different from the Natural Sciences as far as method of inquiry is concerned. And therefore, they intend to discover law that will help to interpret its behaviour.

## VI. Classifications of Research

Normally research can be categorized into two major categories. One category is where the researcher intends to improve the already existing body of knowledge or search for a solution for a common problem which is faced by the society[12]. This research helps in building universal set of principle that can be applicable all over the humanity. The other category of research is known as applied research which is generally followed only when the

[10] Glaser, B.G., *The constant comparative method of qualitative analysis*, SOCIAL PROBLEMS, *12*(4), 436-445 (1965).
[11] CHANGE, I.C., THE PHYSICAL SCIENCE BASIS, 2013.
[12] Kumar, R., *Research methodology: A step-by-step guide for beginners*, SAGE (2018).

society faces or locates any specific issue or problem. Applied research seems to be useful where there arises any problem which is required to be solved. Applied research is focused on some particular small objective by way of research Intervention. The basic or fundamental research is adopted when the researcher intends to extend the body of knowledge. So, in the basic research, the purpose is to expand the body of knowledge so that the information is made available for conducting further research.

Fundamental research or pure research and the aim of basic research, suggests the actual focus of the researcher in exploring basic principles behind social phenomena[13]. In other words, this type of research is basic because the aim of the researchers is actually not to shut the research idea, but actually heading towards understanding in the line of social phenomena. The very basis of basic research has actually expanded and contributed to the theory of the particular field in which a researcher is conducting that inquiry or study. It actually improves or develops theories related to particular fields of study and the focus is on what is actually happening.

As the very name suggests about applied research, it actually means of that research that aims at the application of social research. The focus of this research is not about adding to the theory, or to the theoretical understanding of concepts, but actually to conduct research that helps in improving practices or their impacts of research outcomes. Pure research has a goal of understanding while applied research as a goal of use.

[13] SARANTAKOS, S., SOCIAL RESEARCH, Macmillan International Higher Education (2012).

Pure research is a study conducted to know more about a particular subject phenomenon, processes or current efficient[14]. It is also known as spacing or put the metal research, since its content is purely geometrical. It provides greater understanding of subjects, where little or no information is available in the literature. Pure or basic research is intended for the advancement of knowledge and the periodical understanding of the relationships among variables.

The logical question next follows that Why is something happening when it is actually happening in social contexts? The focus is on the generalization of research outcomes rather than its application in particular fields.

**VII. Research Objectives**

When a researcher surfs internet, he gathers many information, and thus calling it research would be misinterpreting of the term because of no objective. It is foremost needed to have set few objectives and then to proceed in analyzing it.

The answers of the objectives can be sought only through collecting information, and without which no research can be advanced. The researcher is not supposed to collect data and proceed for analysis or until the objectives are set[15]. It is sometimes observed that on the basis of that information which was collected from

[14] Friedman, K., *Theory construction in design research: criteria: approaches, and methods*, DESIGN STUDIES, *24*(6), 507-522 (2003).

[15] Choy, L.T., *The strengths and weaknesses of research methodology: Comparison and complimentary between qualitative and quantitative approaches*, IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE, *19*(4), 99-104 (2014).

different people before setting the objective, the idea of research goes into vein as this may in better words can be called as reordering of the existing facts or information.

## VIII. Hypothesis

Formulating hypothesis, suggesting solutions by collecting, organizing and evaluating data by systematic inquiry are the process of research. The result of the research would particularly lead to Discovery of facts[16]. To investigate properly, the researcher has to be very systematic, pertinent, and be very careful aimed at providing the equation to solve the concerned problems.

In research, usually there considered to be of two types of hypotheses. One is a null hypothesis, and another one needs concern[17]. The null hypothesis, always negates the relationship that there is no significant relationship between the variables, whereas the alternative hypothesis is just on the contrary. After taking the hypothesis in the beginning of it, the researcher starts evaluating the research question, which he has started. Thereafter he starts putting certain techniques to it in arriving to the conclusions in determining whether to accept a null hypothesis or to reject the null hypothesis.

[16] Pedaste, M., Mäeots, M., Siiman, L.A., De Jong, T., Van Riesen, S.A., Kamp, E.T., Manoli, C.C., Zacharia, Z.C. and Tsourlidaki, E., *Phases of inquiry-based learning: Definitions and the inquiry cycle*, EDUCATIONAL RESEARCH REVIEW *14*, 47-61 (2015).

[17] Szucs, D. and Ioannidis, J., *When null hypothesis significance testing is unsuitable for research: a reassessment*, FRONTIERS IN HUMAN NEUROSCIENCE 11, 390 (2017).

Four important aspects of Research Methodology[18]:

i) Formulate Hypothesis
ii) Test Hypothesis
iii) Draw Conclusion
iv) Report Results

At final stage, conclusions which the researcher draws have to be correct. The drawn conclusions will implicate and give final implications of the study of the researcher specifying that whether they are significant or not. The hypothesis is the overall benchmarks which provide directions to the research activity.

## IX. Research Process

Since research is a process, it is thus required to define what the process is. A process is called as a series of steps in which the researcher is not expected to bypass one step over the other[19]. It follows a particular series of the process which means that the series of steps will follow one another and only then the research questions will be answered which will again lead to another questions. The researcher throughout the research journey has to keep in mind that the research is all about advancing conclusive and justifiable evidence.

Well designed and conducted research has a potential to see the application can have proper application to a specialized method of economic research

[18] MACKEY, A. AND GASS, S.M., SECOND LANGUAGE RESEARCH: METHODOLOGY AND DESIGN (Routledge 2015).

[19] Kaplan, B. and Maxwell, J.A., *Qualitative research methods for evaluating computer information systems,* EVALUATING THE ORGANIZATIONAL IMPACT OF HEALTHCARE INFORMATION SYSTEMS, Springer 30-55 (2005).

and reasoning. Researchers often fail to provide adequate interpretations and guidance on applications of research. Thus, researchers become responsible to help the users understand the research implications. Any research which has been undertaken without any implication gets no meaning, whatever the researcher is doing. Thus, before engaging into with any kind of a topic for research, the researcher must ensure that it has an implication for it towards the society. Only the implications make research more meaningful, more pertinent, in the areas of research.

## X. Research Design

A good research design ensures the research is valid and reliable and requires to be followed properly the following steps:

1. Method of the study.
2. Variables.
3. Population and sample.
4. Tools and data collection.
5. Statistical techniques.

## XI. Data Collection and Analysis

Once numbers of areas are identified, it becomes important to select the most appropriate one so that at a large scale the society gets benefitted, and thereafter the stage comes about collection of the data[20]. The collection needs gathering of evidences which can be considered in the form of data and can be forwarded for further process

[20] DENSCOMBE, M., EBOOK: THE GOOD RESEARCH GUIDE: FOR SMALL-SCALE SOCIAL RESEARCH PROJECTS (McGraw-Hill Education 2017).

for analysis. It's become important thereafter to analyze those data gathered. While analyzing the data it is needed to be disseminated with the resultant factors in a meaningful way in order to get the fruitful results.

To understand the Scientific Method, one must have an understanding of what it means when something is supported by "Science" and this is considered as the foundation of knowledge of research methods. Without it, there is no way for the researcher to know whether the researcher's work will lead to a valid result or not. For something to be supported, research methods must be used properly to determine if the hypothesis is supported. This means that the research if was done systematically, would deliver the unbiased result and that would contribute in the advancement of knowledge.

## XII. Result and Publication

Research methodology is the approach commonly taken in the research activities. This can vary from one idea to another, and a good researcher ensures that he/ she understand elements of the methodology that impacts the true results at the end, such as reducing bias and ensuring an accurate sample size. Once the data gets analyzed, the next step of the researcher is to check if the research objectives in the line of the hypothesis of the research have got proved or not. The analysis has to be put forwarded to the research community about the actual outcomes of the research undertaken along with the testable and verifiable results[21].

[21] Nowell, L.S., Norris, J.M., White, D.E. and Moules, N.J., *Thematic analysis: Striving to meet the trustworthiness criteria*, INTERNATIONAL JOURNAL OF QUALITATIVE METHODS, 16(1) 1609406917733847 (2017).

The answers to the questions which emerge from the queries result in moving towards asking whether the conclusions which has been drawn out of the research question, is applicable to all disciplines. This leads to more queries, more questions resulting into engaging into an unending process[22] because Society looks towards the researcher to know other things concerning the correlated other societal issues.

## XIII. Conclusion

The purpose of research is to explore the nature and get an answer for why/how or to generate a new knowledge. Research methodology plays a vital role in any type of research whether it is quantitative or qualitative research. It provides the path to the research by which the researcher conducts their research or study. It makes a proper or effective outline of the research, so that researcher to be active in his or her particular field of enquiry and achieve the objective of the study.

Social research leads to an increased knowledge of people and their interaction with one another which could be relevant to policy makers. Cultural research leads to increased understanding of cultural values or social approaches which helps to obtain contributions of research to a better understanding. In general, research is an important aspect of every institution.

Investigation is necessary because it contributes to the progress of science. The academic relevance of the research technique is how (a) the results were explained

[22] Dickersin, K., Min, Y.I. and Meinert, C.L., *Factors influencing publication of research results: follow-up of applications submitted to two institutional review boards*, JAMA *267*(3), 374-378 (1992).

through data collection to (b) accomplish the study objective, which is centered on (c) the problem to be solved and/or (d) the gap to be addressed. The problem, purpose, and research questions/hypotheses drive the methods, whether qualitative, quantitative, or mixed; thus, selecting the appropriate method, approach, and design is critical to obtaining findings, recommendations, and conclusions that are aligned with the aforementioned problem, gap, purpose, and research questions, as they are all logically interconnected.

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