

## **“Empirical Research - The Best Legal Approach for Participatory form of Research”**

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### **Abstract**

The empirical research and participatory being one of the important research methods is hardly contributed by the legal scholars and law professors. There are ample of reasons behind such non contribution, in spite of being considered the most reliable source of information. This article stated the importance, differences, and steps in non doctrinal research and with factor that is inhabited as to why non doctrinal research is not carried out by the legal researchers. It also studied that participatory research through the empirical approach highlighted the views of the voiceless for the proper and efficient democratic processes.

**Keywords: Non Doctrinal, Doctrinal, Participatory Research.**

### **Introduction**

Our society changes with time, what was good in the past may not be so in the present. Same way the problems of our society differs from place to place and culture to culture. Empirical approach enables us to find out the deficiencies in an enactment and the problems of its implementation. The empirical research can explain (a) what type of law can be enacted, (b) the causative factors for the delay in administering justice, (c) problem that arise because of the variation in the interpretations given by the lawyers and (d) the underlying factors which affect the judgment by ascertaining the workload of judges, lawyers and other personnel in legal machinery. It can also suggest modification in the existing system of judiciary, enforce machinery and in the teaching and practice in law.<sup>2</sup>

The participatory research can be done only when the legal researcher are well trained in empirical approach though this is missing in many of the law professors in India. The participatory observation methodology is considered objectives, for it to enables the researcher to get inside view of a society without at the same time becoming part of that social group. It is assumed that this identity of being within the society without being part of it ensures objectivity

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<sup>2</sup> K.D. Gangrade, ‘*Empirical Method as Tools of Research*’, Journal of the Indian Law Institute, (Vol. 24 : 2 & 3).

of research. The participant observer is, thus, considered a person who can give a society feedback on itself, or oftener still, give policy-makers an objective view of a given society attachment to the community thus studied.<sup>3</sup>

### **Difference between Doctrinal and Non Doctrinal Research**

For understanding the concept of empirical research it is highly important to differentiate and understand the difference between doctrinal and non doctrinal research. Both the approaches have its own characteristics but non doctrinal seemed to be the best and reliable form of legal research.

The essential characteristic of doctrinal research that makes it different from non doctrinal research is stated as below:

- The scholar organized his study around legal proposition.
- Appellate court reports and other conventional legal materials readily accessible in law library are the principle if not the sole, sources of the data from which the scholar's conclusions are drawn. The bulk of legal research is a product of this approach.

On the other hand in the non doctrinal form of research the research scholar typically takes some aspects of the legal decision process, or the people and institutions supposedly regulated by law as the focus of his study. As because the approach taken by the legal scholar under the non doctrinal research is much wider than the doctrinal research the question he asks are more numerous, the data necessary to attempt an answer is not ordinarily available in conventional legal sources. Field work is usually for this type of research.

Legal doctrine may be included in a non doctrinal study, but if so they are treated simply as one of the many variables that may influence decisions, or affect the practices and attitudes of people, or affect the operation of institutions. In most of the non doctrinal research it seeks the following mentioned below:

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<sup>3</sup> Walter Fernandes, '*Participant Observation of Participatory Research? A Critical Search for alternatives*', Legal Research and Methodology, published by S.K. Verma, Indian Law Institute, New Delhi, (2006).

- a. To assess the impact of non legal events (e.g., economic developments, growth of knowledge, technological changes) upon legal decision processes, or
- b. To identify and appraise the magnitude of the variable factors influencing the outcomes of legal decision making, or
- c. To trace the consequences of the outcome of legal decision making in terms of value gains and deprivations for litigants, non litigants, and non legal institutions.<sup>4</sup>

The main distinguishing characteristic of non doctrinal research that makes a different from doctrinal research is stated as below:

- It lays a different and lesser emphasis upon doctrine,
- It seek answer to broader and more numerous questions,
- It is not anchored exclusively to appellate reports and other traditional legal sources for its data and
- It may involve the use of research perspectives, research designs, conceptual frameworks, skills, and training not peculiar to law trained personal.

### **The Basis Steps for Empirical Research**

In an empirical research the legal researcher has to design involving the entire process of planning and carrying out a research study. The major step is as under:

1. Identification and selection of the research problem.
2. Choice of a theoretical a framework (conceptual model) for the research problem and its relationship with the previous researches.
3. Formulation of research problem, specification of its objectives, its scope and hypotheses to be tested.
4. Design of the experiment of enquiry.
5. Definition and measurement of variables.
6. Sampling procedures.
7. Tools and technique for gathering data.
8. Coding, editing and processing of data.

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<sup>4</sup> Cf. Schwartz, '*Field experimentation in Sociological Research*', 13 J. Legal Ed. 401, 402, (1961).

9. Analyses of data selection and use of appropriate statistical procedure for summarizing data and for statistical inference.
10. Reporting description of the research process, presentation, discussion and interpretation of data, generalization of research findings and their limitation, and suggestion for further research.

In the above research design steps as stated can be grouped into the four major stages that are planning stage, design stage, operational stage, and the completion stage. In the planning stage includes the identification, selection and formulation of research problem as well as the formulation of hypothesis and their linkage with theory and existing literature. While in the design stage consists of drawing up the design of the experiment or enquiry, definition and measurement of variables, sampling procedures, tools and technique of gathering data. In the operational stage it deals with the drawing of the finances and time budgeting, recruitment and training of the staff. The completion stage is concerned with analysis and interpretation of data.<sup>5</sup>

### **Factor inhabiting non doctrinal research**

The non doctrinal legal research is hardly contributed by the law professors and legal researcher because of many reasons behind some of the important major factor is mentioned as under:

1. Lack of adequate financial support is a major reason for the relevant lack of non doctrinal research.<sup>6</sup>
2. The second reason why non doctrinal research is hardly carried out and with less contribution made by the law professors is that they are obsessively preoccupied with the teaching functions. In the views of Harry Kalven is right when he suggests that law professors have in fact, been committed "to an odd view that the only test of the relevance of research .....is whether you can teach it".<sup>7</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Ernest M. Jones, '*Some Current Trends in Legal Practice*', Legal Research and Methodology, published by S.K Varma, Indian Law Institute, (2006).

<sup>7</sup> Kalven, '*Some Comments on the Law and Behavioral Science Project at the University of Pennsylvania*', 11 J. Legal Ed. 94, 98 (1958).

3. The arrogant attitude inculcated towards non doctrinal research by most of the legal educators, especially non doctrinal research into the legal order by other disciplines.<sup>8</sup> While good legal training creates a general attitude of skepticism towards generalizations, the training creates a general attitude of skepticism towards generalizations, the arrogance referred to goes much beyond this. As Professor Kalven put it, "...we appear to be making methodology discoveries against the scientists rather than with them".<sup>9</sup>
4. Most of the professors conceive of themselves as lawyers or legal educators, rather than as scholars. Their identifications are more with practicing bar than with a scholarly community. In fact many of the law professors in dress and manner appear to accept the successful lawyers, usually a lawyer with an exclusive practice, as their model. Many others appear unable to decide whether to join faculty or to enter the practice. The result is often a compromise under which a full time law professor devotes much of his energy to consultation. And this significant that we often refer to ourselves as lawyers.<sup>10</sup>
5. The tradition of sustaining non doctrinal research by law schools and law professors is hardly carried forward. In a non doctrinal research although conceived and planned, simply, does not get done because of an excessive of preliminary criticism. "What is the use of such research?" "Courts, legislators and other decision makers won't consider my findings". Such an attitude of course curtails the tradition of non doctrinal research.<sup>11</sup>
6. The law professors are not efficiently trained in the techniques of non doctrinal legal research. We need training and experience in model building of all types as steps in the investigation of legal phenomena. We also need training in designing field research, formulating verifiable hypotheses, the technique of data collection, mathematical and statistical techniques, and the like.<sup>12</sup>

### **Participatory and Voice of the Voiceless Representation**

The lawyers especially the law professors are the builders and social engineers of the society, the empirical approach prove best for such type of research work. Therefore, the legal researcher by

<sup>8</sup> Cohen, 'Factors of Resistance to the Resources of the Behavioral Science', J. Legal Ed. 67-68 (1956).

<sup>9</sup> Kalven, 'Some Comments on the Law and Behavioral Science Project at the University of Pennsylvania', 11 J. Legal Ed. 94, 96 (1958).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Kaplan, 'Mathematics and Social Analysis', in Martin Shubik (Ed.), Reading in Game Theory and Political Behaviour, 16 (1954).

understanding the problems in society, highlighting the views and aspiration of the people at the grass root level would be one of the novel and ethical work necessary for the upliftment of the society.

In the case famous case *Golak Nath V. State of Punjab*,<sup>13</sup> the Supreme Court have rightly said about the social representation being a natural right against the State encroachment, wherein Subba Rao, C.J., said:

But, having regard to the past history of our country, it could not implicitly believe the representatives of the people, for uncontrolled and unrestricted power might lead to an authoritarian State. It, therefore, preserves the natural right against the State encroachment and constitutes the highest judiciary of the State of the sentinel of the said rights and balancing the wheels between the rights, subject to social control.<sup>14</sup>

In the case of *Kanwarlal v. Amarnath*<sup>15</sup>, Bhagwati J. have said:

“some voters are denied an ‘equal’ voice and some candidate are denied an ‘equal chance’....The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self government to the common man only if it brings about participatory democracy in which every man, however lowly or humble he may be, should be able to participate on a footing of equality with others.”<sup>16</sup>

Hence in both the above cases Supreme Court has mentioned that representation of people is necessary for an efficient and effective democracy and it considered the representation process as the natural rights of the people. In the first case it have said representation being the natural rights against the State encroachment and in the second case as democracy would function efficiently and effectively only when there is participatory democracy participate by the people on an equal footings.

In a participatory form of approach, research is viewed no more as the study of a people but a process which the people go through and as a step in awareness-building about the situation of

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<sup>13</sup> AIR 1967 SC 308.

<sup>14</sup> Ibid.

<sup>15</sup> AIR 1975 SC 308.

<sup>16</sup> Ibid.

the oppressed. It is a discovery of the potentialities of the salient majority that has so far been neglected by the decision makers except as the receivers of knowledge and development inputs.<sup>17</sup>

The main features of participatory research as mentioned by Budd Hall are as under:

- Research method has ideological implications.
- Research has to be \_ process whose primary purpose is some direct benefit to a community, i.e., instrumental in social change. An academic paper is only a secondary product and not essential to the process.
- This process, to be effective, has to involve the whole community at every stage of research, from the formulation of the problem and discussion of the search for a solution, to the interpretation of the data. Involvement of all the groups is essential if we accept change as the goal of research.
- The research process thus becomes part of an educational experience of the people and increases awareness and commitment within the community. Obviously, it is dialectical process spread over a long time and \_\_\_ not as effective as the process the people go through.
- The outcome of this process is liberation of creative potential that is present in every community but is often suppressed and reduced to silence by the dominant sectors. This liberation is also part of a process of mobilization of human resources for the solution of social problems.<sup>18</sup>

## Conclusion

Empirical and participatory form of research goes hand in hand. When our society lacked participation of the grass root level in our society \_ it is only through empirical approach one can systematically raised their voices and aspirations of the people. However, in a legal research this type of research is hardly carried out due \_ many reasons like the funding problems, legal professor being busy with classes and students, lack of training in non doctrinal research, conceive the ideas as lawyer rather than legal educator and scholar. The law professors and

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<sup>17</sup> Ibid.

<sup>18</sup> Budd Hall, '*Participatory Research: An Approach for Change*', 9 Convergence 24-32 (1975).

upcoming legal researcher should take non doctrinal and participatory research as one of their important approach to research and be trained to be researcher in non doctrinal method.