

Empirical Method in Legal Research

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1. Introduction

Etymologically the term 'research' is from a French word 'reachercher meaning 'to search' and a Latin word 'circare' meaning 'to go round in a circle'.¹ Research is a process in which a person observes the phenomena again and again from different dimensions and collects the data and on the basis of analyzing the data draws some conclusions. Research is oriented towards the discovery of relationship that exists among phenomena of the world in which we live.² Research is indispensable tool for enhancing knowledge, improving quality of life, all round progress of human society, scientific and technological progress and searching for truth and creating new ideas. As research is a vast, multi-dimensional subject concerning innovation, solution to complex problems, addition of new knowledge and techniques ordinary definitions of research can be inadequate. Human knowledge works at two levels, at the primary level it functions as the basis of useful human activities and at the secondary level knowledge is employed to obtain increments in the existing knowledge. Research is vast and multi-dimensional concept that ordinary definitions can't project its meaning completely. Research is endless quest for knowledge or unending search for truth.³ Black's Law Dictionary has not defined the term research rather it has defined research

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¹ DR. S.R. MYNENI, LEGAL RESEARCH METHODOLOGY, (4th ed.), Allahabad Law Agency, Faridabad, India, at. 1, (2009)

² YOGESH KUMAR SINGH, FUNDAMENTALS OF RESEARCH METHODOLOGY AND STATISTICS, New Age International (P.) Ltd., New Delhi, India, at.2-3 (2006)

³ DR.BAL BAHADUR MUKHIA, LEGAL RESEARCH AND METHODOLOGY AT A GLIMPSE, Mrs. Malati Mukhia and Aditya Mukhia, Baneshwor, Kathmandu, Nepal, at.1 (2011)

and development as; an effort (as by a company or business enterprise) to create or improve products or services especially by discovering new technology or advancing technology.⁴ According to *Webster's International Dictionary*; "Research is a careful and critical enquiry or examination in seeking facts or principles, diligent investigation in order to ascertain something"⁵. *P.V. Young* has defined it as 'a systematic method of discovering the new facts or verifying the old facts, their sequences, inter-relationship, casual explanations and the natural laws which govern them'⁶. According to *Fred N. Kerlinger*, "Research is a systematic, controlled, empirical and critical investigation of hypothetical propositions about the presumed relation among Natural phenomena."⁷ *Redman & Mory* have defined research as; "systematized effort to gain new knowledge"⁸ and according to *C. Francies Rummel*; "Research is an endeavour to discover, develop and verify knowledge. It is an intellectual process that has developed over hundreds of years, ever changing in purpose and form and always searching for truth." Therefore the term research has been found to be defined differently; however it can be said that; Research is looking into the phenomena again and again and study the problem differently and thoroughly each time. This repetitive process of searching to come closer and closer to the truth is known as research; in short "Repetitive Search is Research".⁹ The main purpose of research is to inform action, to prove a theory, and contribute to developing knowledge in a field or study. The research can also be explained and expressed with its significance with the following points:¹⁰

Research is a:

- tool for building knowledge and for facilitating learning
- means to understand various issues and increase public awareness
- an aid to business success
- a way to prove lies and to support truths
- means to find, gauge, and seize opportunities

⁴ BLACK'S LAW DICTIONARY (9th ed.), (2009) at. 1422

⁵ MYNENI, Supra note 2, at.1

⁶ HANS RAJ, THEORY AND PRACTICE IN SOCIAL RESEARCH, Surjeet Publication, Delhi, India, at.3 (1999)

⁷ FRED N. KERLINGER, FOUNDATION OF BEHAVIORAL RESEARCH, Surjeet Publication, Delhi India, at.11 (1986)

⁸ MYNENI, Supra note 2, at.2

⁹ PREM R.PANT, SOCIAL SCIENCE RESEARCH AND THESIS WRITING, Buddha Academic Publisher and distributors Pvt. Ltd., Kathmandu, at.4 (2014)

¹⁰ <https://owlcation.com/academia/Why-Research-is-Important-Within-and-Beyond-the-Academe>

- a seed to love reading, writing, analyzing, and sharing valuable information and
- nourishment and exercise for the mind etc.

2. Types of Research

Research has been classified differently by different writers, social scientists and scholars on the different basis. Generally research can be classified from different view point or perspective as follows;

Based on	Types of Research
Application:	Pure (Basic or Fundamental) & Applied
Objective:	Descriptive, Exploratory, Correlative & Explanatory
Inquiry Mode:	Quantitative & Qualitative
Time(s) Period:	One time research & Longitudinal
Rational & Factual:	Conceptual Research & Empirical Research

Similarly Legal research work may be broadly divided into Doctrinal or Traditional research, Non-doctrinal or Empirical research, Comparative legal research, Statistical research, Critical research and other kinds of research etc.¹¹

3. Objectives of Research

Generally any research has the following 3 Objectives:

- i. *Theoretical objective*: formulate new theories, principles or laws. Such type of research is explanatory.
- ii. *Factual objective*: to find out new facts. This objective is by nature descriptive, which describe facts or events which happened previously. and,
- iii. *Application objective*: it does not contribute a new knowledge in the fund of human knowledge but suggests new applications. By application we mean improvement and modification in practice.¹²

4. Process or Steps of Research

Generally a typical process or steps of research can be expressed in a flow chart as follows;

¹¹ DR T. PADMA & K.P.C.RAO, LEGAL RESEARCH METHODOLOGY, (1st ed.), Asia Law House, Hyderabad, India, at. 30-31, (Reprint 2015)

¹² SINGH, Supra note 3, at.2-3

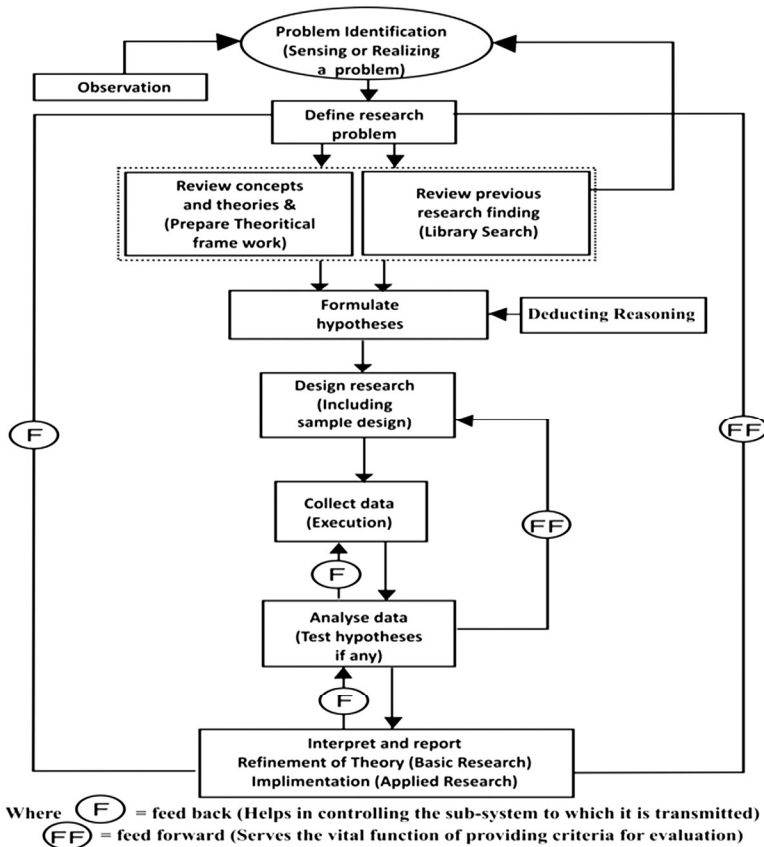


Figure:1.4.1. Process of Research, Source: C.R.Kothari, *Research Methodology-Methods & Techniques at.11* & Prem R. Pant, *Social science research and thesis writing at.13*.

The following are the six typical steps of research:

- (i) *Selection of the problem*: The problem is selected and defined. The feasibility of the problem depends on its delimitations. Hence, the problem is also delimited in this step.
- (ii) *Formulation of hypotheses*: Some tentative solutions are given for the problem when these solutions are based on certain rationale they are termed as hypothesis. Therefore, in this step hypotheses are formulated.
- (iii) *Design of research*: These hypotheses are subjected to verification. A design of research is developed for collection of data or evidences for testing the hypotheses. It involves method, sample and techniques of research. The appropriate method and techniques are selected for this purpose.

- (iv) *Collection of data*: The methods of data collection like observation, questionnaire, survey and case study etc. are administered and data are collected.
- (v) *Analysis of data*: The appropriate statistical techniques are used to analyze the data so that some decisions may be taken about the hypotheses. The results are used to draw some conclusions.
- (vi) *Formulation of conclusions*: The results are discussed and some conclusions are drawn in the form of new information, theory, facts and solution for the practical problems.¹³

Therese L. Baker has mentioned about eleven steps in a research project in her popular book “Doing Social Research: 1994” as; *step-1*: define the topic, *step-2*: find out what is known about the topic, *step-3*: clarify concepts and their measurements, *step-4*: establish an appropriate data collection method, *step-5*: operationalize concepts and design the research instruments, *step-6*: select a sample of subject to study, *step-7*: consider the purpose, value and ethics of the study, *step-8*: collect the data, *step-9*: process the data, *step-10*: analyze the data and *step-11*: present the results.

5. Legal Research

Black’s Law Dictionary has defined Legal Research as “the finding and assembling of authorities that bear on a question of law; or the field of study concerned with the effective marshaling of authorities that bear on a question of law.”¹⁴ Legal research is the process of identifying and retrieving information necessary to support legal decision-making in complex legal issues which is applied to specific facts requiring complete answer for clients that pay for the legal expertise.¹⁵ It includes in it each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.¹⁶ Legal research may be defined as systematic finding law on a particular point and making advancement in the science of law. However, the finding law is not so easy. It involves a systematic search of legal materials, statutory, subsidiary and judicial pronouncements. For making advancement in the science of law, one needs to go into the underlying principles or reasons of

¹³ SINGH, *Supra* note 2 at.11

¹⁴ BLACK’S LAW DICTIONARY (9th ed.), (2009) at. 979

¹⁵ LexisNexis, An Introduction to Legal Research, url:http://www.lexisnexis.com/documents/LawSchoolTutorials/20120619103358_Large.pdf (20 Jun 2019)

¹⁶ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot.worldpress.com, at.23 (2009)

the law¹⁷. These activities warrant a systematic approach. An approach becomes systematic when a researcher follows scientific method which is empirical and logical rational in character.

Legal research may be defined as the systematic investigation of problem and matters relating to law it comprises research in various avenues of knowledge, principles/theories of laws and legal institutions and it may be understood to obtain better knowledge and understanding of any problem of legal philosophy, legal history, comparative study of law and different approaches of law or schools of jurisprudence including modern trends. In short it is the process of finding the law that governs activities in human society which involves locating both the rules enforced by the state and commentaries to explain or analyze those rules and applying law to a particular situation requires expertise in legal analysis.¹⁸ Any person who is curious to 'know' something about a particular 'law' and/or its operational facets and is willing to work hard to 'know' or 'unearth' it, can be a legal researcher. He/she may be a sociologist, an historian, a political scientist, a social anthropologist, an economist, or a legal philosopher. But as an occupational exercise, legal research needs to be undertaken by Legislators, Judges, Lawyers, and Legal Academia (law teachers and students).¹⁹ In fact, the nature of professional commitment forces these persons to get themselves indulged into legal research, though for a living, besides improvement of their profession and achieving the purpose of legal research. Legal Research is not essentially different from other types of research. This too is search for authority to verify some hypothesis and is a continuum. Its issues of enquiry naturally relate to pure law or law in relation to society. Under the broad theme of enquiry about law, an analysis is made of the rules, concepts and institutions of the law and of the legal system itself. Such an enquiry tends to be;²⁰

- i. *Evolutionary*:- to find out evolution of legal facts (Rule, concept, institution or the legal system itself)
- ii. *Explicative*:- to ascertain the nature, scope and source of law in order to explain what law is and also to spell out the several propositions, parts and facts of law and the legal system.

¹⁷ Ibid, at.2

¹⁸ MUKHIA, Supra note 3, at.4

¹⁹ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot. wordpress.com, at.14 (2009)

²⁰ S.K.VERMA, M. AFZAL WANI, (eds.), LEGAL RESEARCH METHODOLOGY, The Indian Law Institute, at.139 (2001)

- iii. *Identificatory*:- to ascertain for whom (i.e. for whose benefit) a legal fact (Rule, concept, institution or the system of law) is made and exists.
- iv. *Impact Analysis*:- to analyze the impact of an established or newly conceived legal provisions, rule or institution. Impact analysis is the study of the effect of law in and on the society.
- v. *Projective and predictive*:- to anticipate the effect of a proposed legal measure. These studies are mainly attitudinal, intended to anticipate the probable response in terms of rejection or acceptance of a proposed measure by the people (Pre legislative studies). It helps to minimize incidence of undesirable consequences by judging the feasibility of proposed law and advise the law makers accordingly.
- vi. *Interactive*:- to study the process of interaction between law and other relevant forces, factors and institutions operative in society. It conceives law is a part of the society therefore it too is covered by the order of mutual interdependence with the other parts of the society.
- vii. *Interpretative*:- to interpret an existing formal legal fact. This is the most common kind of legal research. Normally statutes, texts and judicial decision are the subject matter of research in this category. Interpretation drawn from grammar, language and law, common sense and public policy are the tools that aid this kind of research.
- viii. *Collative*:- to collate legal facts pertaining to a given situation. It may be by way of preparing a digest of statutory provisions, judicial decisions and customary law or preparing bibliographies of legal materials including legal writings. It leads to waste of time, as most of the researcher's time is consumed in trying to locate the existing legal materials on his topic. So well collated material will serve a useful purpose reducing the labour of researchers.

6. Legal Research Method and Methodology

The term 'research methods' in one hand refers to all the methods and techniques or tools that are employed by a researcher while conducting research which includes collection and processing of data, establishing the relationship between the data and unknown facts, and evaluating the accuracy of the results obtained. The term 'research methodology', on the other hand, refers to a 'way to systematically solve' the research problem. It may be understood as a 'science of studying how research is done scientifically'. It involves a study of various steps and methods that a researcher needs

generally to adopt in the investigation of a research problem along with the logic behind them. It is a study of not only of methods but It includes in it the philosophy and practice of the whole research process.²¹ In other words, research methodology is a set of rules of procedures about the way of conducting research.

Law, can be perceived as a normative science as it sets norms of human behavior. Most of the times, it also plays a role of catalyst for bringing socio-economic change. It is a means to an end. A systematic investigation of the first dimension of law (as a normative science), generally, falls in the domain of legal academia. A scholar of law, generally, undertakes a rigorous systematic analysis, exposition and critical evaluation of legal rule, legal principle, legal concept or doctrine (i.e. legal fact). Based on this analysis, he/she may highlight conceptual basis of the legal rule, principle or doctrine and may forward some proposals for reforms. He/she need not go beyond the discipline of law. While inquiry into social dimension of law or societal role of law, traditionally, falls in the domain of sociologists as it, invariably, involves a systematic look at, or discovery of, functional aspect of law and/ or 'behavioral pattern' of an individual or a social group in response to 'law'.²² Legal scholars, therefore, have not been able to evolve any specific methodology of their own for carrying out legal research. They do not have well-articulated research methods to employ and research methodology to follow in legal research. Sociologists, on the other hand, have developed and inherited a comparatively well developed research methods and methodology for systematic investigation of social fact or behavior. Some sociologists have successfully employed (and have been employing) these well-developed research methods and methodology to 'understand' social dimension or role of law, as 'law' has been perceived as 'means' (and not 'end') of social change, social control or social engineering.²³ Which has been much emphasized since the emergence of the sociological jurisprudence.

Legal scholars, in the absence of their own well-developed legal research methodology, have to place their reliance on the social science techniques of data collection (such as interview, questionnaire, schedule or observation)

²¹ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot. wordpress.com, at.19 (2009).

²² Ibid at.44

²³ VERMA , Supra note 19, at.45

and research methodology. Ultimately, this approach of legal researchers has led to the evolution of a sort of 'hybrid' legal research methodology having a blend of (traditional) analytical (legal) research and empirical (social) research. A legal researcher, therefore, needs to identify and understand the distinct characteristics of his/her legal research for employing an 'appropriate' research methodology.²⁴ The legal methods equally invite the social data thus application of social research method to give a solution and to study a further specific objective is termed the socio-legal research. Socio -legal research is the process to make a rule of law and rule of life close together. S.N.Jain writes: The Socio-legal research i.e., the method and theories of the social sciences, with a view to examine legal problems from the policy and reform perspectives. The approach is pragmatic, utilitarian, empirical and policy-oriented. The emphasis is one the legal problems in relation to society. Socio-legal research is interdisciplinary in approach and uses the techniques of questionnaires, interview, and study of records and procedures of other agencies. The application of social research methods to studying in law or legal study by the involvement of legal and social researchers or legal study by applying the social data and evidence is qualities for being the socio-legal research. It may doctrinal or empirical but emphasis has been given to the empirical because this short of research helps to understanding the law in action. Jurisprudentially speaking to this method is thus belongs to the pragmatism.²⁵

Research has various categories. Among them is a research method that is based on the focus of study, it is divided into three parts, namely: (i) *normative legal research method* also commonly known as doctrinaire or bibliography research, (ii) *empirical-normative legal research methods* which is an amalgamation between normative legal approach with the addition of various empirical elements and (iii) *empirical legal research method* is a method that serve to see the law in the real terms (observe the people in their public environment) and examine how the working of the law in society.²⁶ Therefore this method can also be said as socio-legal research.

Arthurs proposed a useful taxonomy of legal research styles represented

²⁴ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot. worldpress.com, at46 (2009)

²⁵ Kamal Raj Thapa, "Socio-legal Research: a Jurisprudential Impression", NEPAL LAW REVIEW, vol.23, year 35, at.235-237 Nepal Law Campus, Exhibition Road, Kathmandu, Nepal (2011)

²⁶ Muhammad Iqbal, Law as a Method and Norm, url:https://www.academia.edu/16567805/ Legal_Research_Methods

as a matrix in a figure below in his report on legal education and research in Canada in 1983.²⁷

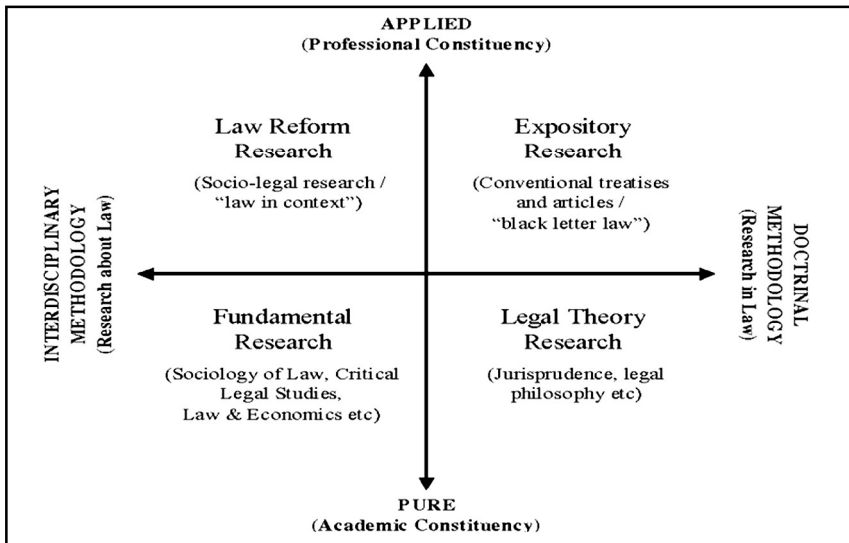


Figure:2.1.1 Taxonomy of Legal Research Style, Source: Paul Chynoweth, *Legal Research in the built environment:A Methodological Framework*

The vertical axis of the above matrix represents the familiar distinction between pure research which is undertaken for a predominantly academic constituency, and applied work which generally serves the professional needs of practitioners and policy makers. However, in the present context, the more interesting distinction is that between doctrinal and interdisciplinary research which is represented by the horizontal axis.

7. Purpose of Legal Research

Law, as mentioned earlier, does not operate in a vacuum. It operates in a complex 'social setting'. It reflects social attitudes and behavior. It also seeks to mould and control social attitudes and behavior of people to ensure that they flow the expected channel. However, social values and attitudes, existing as well as expected, keep on changing. It makes the law to be dynamic and cope with the changing social ethos. Further, ongoing scientific and technological developments add to these complexities by creating new complex human relationship that needs law to regulate. In such situations, legal research, *inter alia*, becomes necessary: (i) for ascertainment of law

²⁷ Paul Chynoweth, *Legal Research in the built environment:A Methodological Framework*, url:http://csas.ed.uk/_data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_Salford_Uni.pdf (20 Jun 2019)

on a given topic or subject, (ii) to highlight ambiguities and inbuilt weaknesses of law, (iii) to critically examine legal provisions, principles or doctrines with a view to see consistency, coherence and stability of law and its underlying policy, (iv) to undertake social audit of law with a view to highlighting its pre-legislative 'forces' and post-legislative 'impacts', and (v) to make suggestions for improvements in, and development of, law.²⁸

Law is very foundation of society and, therefore, legal research undertakes to serve the following main purposes:²⁹

- to suggest a reform in the existing law
- to establish the relationship between law and other disciplines effecting human activities
- to search and collect and make available the legal principles which are useful for society, but which have not yet become the part of statutory law;
- to suggest a set of rules where no rules exist at all etc.

Legal Research as a tool of Law Reform

When research is undertaken as a part of the process of law reform, it is undertaken with a definite end namely making suggestions for improvements in the law on concrete and easily identifiable matters and the formulation of those proposals in precise terms.³⁰ The type of research needed for law reform is as follows:

- i. Analytical:* finding out the existing law
- ii. Historical:* finding out the previous law in order to understand the reason behind the existing law and the course of its evolution
- iii. Comparative:* finding out what the law is in the other countries and considering whether it can be drawn upon, with or without modification
- iv. Statistical:* collection of statistics to show the working of the existing law
- v. Critical:* finding out the defects in the existing law and suggesting reforms

Legal research as an essential Lawyering Skill

The ability to conduct legal research is essential for lawyers, regardless of area or type of practice. The most basic step in legal research is to find the

²⁸ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot.worldpress.com, at.30 (2009).

²⁹ DR T. PADMA & K.P.C.RAO, LEGAL RESEARCH METHODOLOGY, (REPRINT.), Asia Law House, Hyderabad, India, at. 68, (Reprint 2015).

³⁰ VERMA, Supra note 20, at. 112-113

leading case governing the issues in question. As most researchers know, this is far more difficult than it sounds. Often the issues are not correctly identified, or some issues are missed altogether. Issue identification is crucial for effective research. The law is constantly changing. Decisions of the apex courts show the fluidity of legal doctrine, split decisions of the court make it difficult to determine how the next case will be decided. In many areas there are conflicting decisions, or no binding authority. So we must then research the law of other jurisdictions, and apply creative analysis to the existing case law or create an argument based on first principles. Finding the law is an important part of legal research, but the ability to analyze the finding and reach a conclusion or formulate an argument based on it is just as essential. Successful researchers continually re-evaluate their research methodology and consider alternative research approaches as they find that various sources or research approaches are helpful or fruitless. Even more important, we also need to learn how to advance our analysis of a law-related problem by means of our research. Even the most diligent researcher, armed with the latest technology, will not arrive at a successful result if he or she approaches legal research as a mechanical process devoid of analysis³¹. Thus, legal research is really just a portion of legal problem-solving.

8. Empirical Research

Concept: The scientific character of research is both empirical and logical-rational. Science is empirical because it is based on the study of observed evidence. This means that science as an activity is an advance form of seeing. Science is the effort to observe how the real world works. If we could directly see into a living cell, see the force of gravity, or see how juvenile become delinquent, scientific activity would be much simpler. However, since our unaided eyes cannot see all these things, we have devised scientific instruments and scientific method to enable us to better observe the world.³² Black's Law Dictionary has defined the term empirical as a term relating to, or based on experience, experiment or observation.³³ Thus empirical research can be defined as "*research based on experimentation or observation (evidence)*". Such research is conducted to test a hypothesis. The central theme in scientific method is that all evidence must be empirical which

³¹ Catherine Best, Importance of Legal Research, <http://www.cch.ca/newsletters/LawStudent/May2011/Article1.htm> (19 June 2019)

³² THERESE L. BAKER, DOING SOCIAL RESEARCH, (2nd ed.), Mc Graw-Hill Inc., Singapore at.41 (1994)

³³ BLACK'S LAW DICTIONARY (9th ed.) at. 602

means it is based on evidence. The term “empirical” was originally used to refer to certain ancient Greek practitioners of medicine who rejected adherence to the dogmatic doctrines of the day, preferring instead to rely on observation of phenomena as perceived in experience. The doctrine of empiricism was first explicitly formulated by John Locke in the 17th century. Locke argued that the mind in a tabula rasa (“Clean Slat or blank tablet,”. Locke actually used the words “White paper”) on which experiences print their marks. *Such empiricism denies that humans have innate ideas or that anything is knowable without reference to experience. This method is generally taken to mean the collection of data on which to base a theory or derive a conclusion in science.* It is part of the scientific method of study, but is often mistakenly assumed to be synonymous with the experimental method. *The fundamental objective of empirical research is to make inferences- that is, using known facts to understand unknown facts.* Typically we use observable data (known facts) to test certain hypotheses which are guided by theory to uncover these unknown facts.

The central claim of empiricism is that experience is the foundation of knowledge and that the project of gaining access to a reality other than experience is problematic. However like positivism, a term with which it is closely associated, empiricism has been used to designate different claims and tendencies during its long history and the concept has evolved to such extent that those who are now regarded as copybook empiricist. Empirical Research following the tenets of empiricism is grounded in the belief that direct observation of phenomena is an appropriate way to measure reality and generic truth about the world moreover empirical research in the social science has been shaped by logical positivism, an ontological framework that assumes social phenomena can be studied scientifically when modeled along the objective, experimental, verifiable and generalizable methods of the natural sciences. The philosophical assumption in positivist research is that of foundationalism-that all knowledge has a secure foundation and that following the right procedures leads us to “truth”.³⁴

Empirical Cycle: An empirical cycle according to A.D. de Groot can be expressed as follows:³⁵

³⁴ LISA M. GIVEN (Gen. ed), THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS, Sage Publication Inc. California, USA, at. 253 (2008)

³⁵ <http://www.webscolar.com/empirical-research-definition-and-steps-of-the-empirical-cycle>

- **Observation-** Collecting and organizing empirical facts to form hypothesis
- **Induction-** Formulating hypothesis
- **Deduction-** Deduct consequences with newly gained empirical data
- **Testing-** the hypothesis with new empirical material
- **Evaluation-** Evaluation of outcome of testing

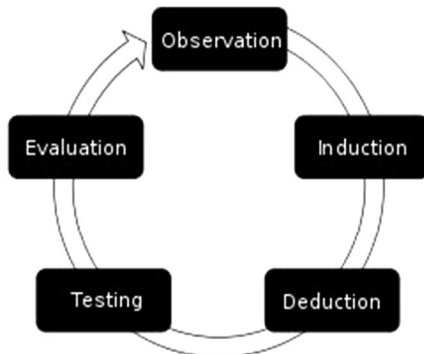


Figure:3.2.1 Empirical Cycle, Source: <http://www.webscolar.com>

Methods in Empirical Research

There are two main methods in empirical research as;

- (i) *Experimental:* They deal with cause and effect relationship. In this method two groups; experimental group and control group are chosen such that they do not differ from each other. The experimental group is exposed to the assumed causal variable while the control group is not. The two groups are then compared in terms of the assumed effects. This type of method is only suitable for physical sciences, like in physics, chemistry, botany, laboratory research and in natural science.
- (ii) *Non-Experimental:* Subjects are observed without experimental intervention. In Socio-legal researches, human conduct, attitudes and behavior are the subject matter of the study which cannot be controlled by the researcher. So the researcher has to observe without any experimental intervention. The methods like observation, interview, questionnaire, survey and case study has to be employed.

Conducting empirical research in law is carried out by collecting and gathering data or information relating to universe by the first hand study. There are two

methods of data collection as; census and sampling method. Generally the methods like *observation, interview, questionnaire, survey, and case study* etc have been used in empirical or socio-legal research.

Empirical Research in Law: Legal research is one of the aspects of study of human behaviour, their interactions, and attitudes pertaining to any law. Legal phenomena require their own research methodology. The nature of legal issues and the subject matter of law is radically different from other sciences. Therefore, the content of proposition and explanations is also different. The methodology of legal studies involves its own rules, interpretations and criteria for admissible explanations as well as research design, data collecting techniques and data processing routines. Legal studies lack the appropriate methods, tools and techniques suitable for the legal issues. In most of the legal investigations, qualitative data has to be analyzed. Hence, this separate study of legal methodology is taken up.³⁶

The research which is conducted to explore, describe or to interpret the law are purely Legal in nature otherwise the scope of the law is in and on the society. Laws are made to regulate the behavior of the people living in a society and social institutions and to control social phenomenon as a whole. Laws are also enacted to ensure the rights and liberties of the people and to impose duties on them. So most of the legal research are Socio-legal in nature (to study human attitude, behaviors, their interactions and perceptions pertaining to a law or a pre-legal study; and study of the impact of a law in the society.) There is a saying that '*society grows faster than the law*', Law is an instrument of social change so it must keep equal pace with a progressive modern, society.

Conducting empirical research in law is of recent origin. Empiric means relying solely on observation and experiment, not on theory. The empirical research is carried out by collecting and gathering data or information relating to universe by the first hand study. Empirical Legal Studies is a growing field of legal study which emphasizes the use of empirical research approaches similar to other social science disciplines such as economics, political science, sociology, and psychology.³⁷ Research Techniques will vary according to the field, context and the aim of the study. e.g. qualitative methods are more appropriate for many socio-legal questions and quantitative

³⁶ MYNINI, Supra note 2, at.11

³⁷ <http://www.law.harvard.edu/library/empirical-research-services/index.html>

methods more appropriate for the disciplines like medicine, physics etc. However, underlying all empirical research is the attempt to make observations and then answer well-defined questions via the acceptance or rejection of a hypothesis, according to those observations. Empirical research can be thought of as a more structured way of asking a question and testing it. Conjecture, opinion, rational argument or anything belonging to the metaphysical or abstract realm are also valid ways of finding knowledge. Empiricism, however, is grounded in the “real world” of the observations given by our senses.³⁸ The methods like *observation, interview, questionnaire, survey, case study* etc. are used for the collection of data.

Unlike in the case of doctrinal research in which the research is carried on, on the basis of the facts and data, stored in the library, archives and other data base, the empirical research is carried on by collecting or gathering information by first hand study of the subject. It relies on experience or observation without due regard to any theory or system and hence it is also called as experimental type of research. In this type of research, researcher attempts to investigate effect or impact by actual examination or observation of the functioning of law and legal institutions in the society. This kind of research is not very popular among doctrinal or analytical research to find out principle of law. However, it is now gaining recognition in certain areas such as criminology, juvenile offences, labour law, corporate laws etc.³⁹

Importance of Empirical Legal Research: Law is an instrument of social change. It must keep pace with a progressive modern, society. Living in the present times is a more complicated process that what it was in the past times. The problems of today cannot be solved by the methods or tools known before. These will have to be altered from time to time to suit the changing social circumstances. Social change in society can be brought about either through welfare measures, which must be provided in abundance, or through persuasion by creating a strong public opinion and awareness against age-old prejudices, or lastly, by legislation. The first two of these measures have failed to make any appreciable impact; they have failed even to touch the fringe of the problem of the downtrodden (exploited or demoralized by the people in authority) millions who need them most. Social workers and other are engaged in various ways of persuasion but they reach

³⁸ Lindsay T. Wilson/Empirical Research, www.explorale.com/empirical-research

³⁹ PADMA, Supra note 11 at. 36

out only to a small segment of the vast population. Besides, persuasion has only a temporary effect on the people. To illustrate the point, social workers who revolted against un-touchability, laws prohibiting child marriage and various other legislative measures of social reform will not root out the evil completely from the society. This is so because, even though the government of the day, with its majority in parliament, may pass a law, its implementation requires the support of the judiciary, the police and strong public opinion.⁴⁰ There various legal enactments in Nepal like Social practices (reform) act, 1976 which are still dormant and ineffective.

Legal research can enable us to find out the deficiencies in an enactment and the problems of its implementation. The deficiencies in enactments and the problems of their implementation can only be highlighted with the help of empirical studies. Scientific knowledge represents knowledge about true reality (reality as it exists) and empirical knowledge stands for the empirical reality (reality as we perceive it). True reality and empirical reality are not co-terminus. Therefore, empirical knowledge by itself does not enable us to know the true reality. But the use of the scientific method provides with a bridge between the empirical knowledge and true knowledge. Thus empirical research is an integral part of the scientific method which combines reasoning with observation, and discovery with justification, for the acquisition of scientific knowledge. The search for the scientific knowledge usually starts with a scientific problem and the knowledge is the product of the process of understanding and solution of the problem. The solution of a problem is arrived at in two stages; first a tentative solution of the problem is obtained through reasoning from the available knowledge, which is what is meant by discovery; second, the tentative solution is verified through observation, which is referred to as justification. empirical research stands for the various procedures of obtaining, analyzing and presenting data in the context of justification. It is useful for acquiring scientific knowledge only if it is undertaken as a complement to the theoretical exercise in scientific method.⁴¹ The empirical research can explain;

- what type of law can be enacted
- the causative factors for the delay in administering justice
- problems that arise because of the variation in the interpretations given by lawyers; and

⁴⁰ VERMA ,Supra note 20, at.273

⁴¹ VERMA, Supra note 20, at.309

- the underlying factors which affect the judgment by ascertaining the workload of judges, lawyers and other personnel in legal machinery
- the empirical studies can assist in suggesting modifications in the existing system of judiciary, enforcement machinery and in the teaching and practice of law.⁴²

Empirical study or Socio-Legal Research in Nepal: The urge for the socio-legal research in Nepal has manifested while the numbers of legal doctrine and reasonable procedure are not functioning well. *Systematic research is all socio legal sphere is called for in order to give direction to our changing society and for a deeper insight into the policies to be framed and implemented by all governmental and non governmental agencies.*⁴³ The law commission has responsible for the entire legal reform, but disinterestedness and less aware hinder it, thus they incline to conduct seminar with the group of favoured; so called experts and submit the draft to concern ministry with the very technicalities and ambiguous. Legal drafting is quite different from the legal writing and other court-document thus needs the proper social understanding. Very simple success of the legal system has based on the social conditions which comprise the morality, values, norms, practice, religious etc, known as the social consciousness; the isolation of which can heavily erode and lastly subvert the legal system. But Nepalese practice is quite contradicted the government separates the law from people by ignoring the popular participation. Nepalese legislation process is the prescription of medicine without diagnosis of the disease. Therefore socio-legal method contributes to diagnosis and identifies the problems, and if problems are identified, can be offered the remedies. Post democracy, some legal institutions, e.g., National Judicial Academy (NJA), Nepal law society, CeLERD, Pro-public, FREEDEL, FWLD etc. are established but they just reminded as the positive consideration, even though the application of social legal research has not considered truly and largely for sake of the social security and constitutional purpose of the distributive justice. Thus Nepal most of the social as well as welfare statutes or legislation are largely remain unpractical or remained as the paper tiger.⁴⁴ Similarly a large number of statutes also remain nonfunctional which have been enacted in a hurry for the fulfillment of international commitment made by Nepal as being a party to the various international treaties and conventions.

⁴² Ibid, at.274

⁴³ Dr.Khushal Vibhute & Filipos Aynalem, Legal Research Methods: Teaching Material, url:www.chilot. worldpress.com, at241, (2009)

⁴⁴ Ibid at. 242

Data collection tools and techniques: Conducting empirical research in law is carried out by collecting and gathering data or information relating to universe by the first hand study. There are two main techniques or methods of data collection as follows;

Census method:- When the whole area population of persons is contacted the method is known as census method. Population is constituted the universe (of all the individuals, things, events, documents or observation cases etc) is selected for data collection. eg. Population census survey. This method has some merits like accuracy in results, extensive study and demerits like expensive and not feasible, may not meet with urgency and inapplicability if universe is infinite.

Sampling method:- Most research studies are based on samples. When a small group is selected as representative of the whole it is known as sample method. The method of selecting for study a portion of the universe with a view to draw conclusions about the universe is total is known as sampling.⁴⁵ A researcher while doing socio-legal research has to decide basically two important things like What will be the scope of the study? and What will be the population or universe of the study? Researcher may decide to cover the whole population, if he has time, energy, resources and capacity. If that is done, is known as census method of study. On the other hand he can pick up a small unit out of the whole study. Such a unit is expected to be representative of the whole population. It is felt that when this unit is studied, the whole population will be studied. In other word the conclusion drawn will be representative of the whole group. When that is done it is called sampling method.⁴⁶ Some terminology mostly used in sampling method can be defined as follows:

Population or Universe:- It means, the entire mass of observations, which is the parent group from which a sample is to be formed. *Sample Size:-* The proportion of the population taken from the universe for the study is known as sample size. A good sample size is one which fulfils the requirements of efficiency, Representativeness and reliability as well as flexibility. The size of the sample is no necessary insurance of its representativeness. *Relatively small samples properly selected may be much more reliable than large samples properly selected.*⁴⁷

⁴⁵ MYNENI, Supra note 1 at.126

⁴⁶ KERLINGER, Supra note 7 at.22

⁴⁷ MYNENI, Supra note, 1, p.130

Randomization:- It is a method of sampling in which each individual of the population has the equal chance or probability of selection of the individuals for constituting a sample. All members of the population have essentially the same probability of being selected. The following are the main characteristics of randomization.⁴⁸

Types of sampling designs: Probability Sampling: Sample selected in such a way that every element chosen has a known probability of being included. Probability sample is representative of population. Types and techniques in probability sampling are as follows:

- i. **Simple random sampling:** In which each element of the population has an equal and independent chance of being included in the sample i.e. a sample selected by randomization method is known as simple-random sample and this technique is simple random-sampling. Randomization can be done by using the techniques as; tossing a coin, throwing a dice, lottery method, blind folded method and by using random table of 'Tippett's table'.⁴⁹
- ii. **Stratified sampling:** The population is divided into smaller homogenous group (Strata) on the basis of some characteristics and from each of this group a predetermined number of units are randomly selected. This may be of 3 types as; disproportionate stratified sampling, proportionate stratified sampling and Optimum allocation stratified sampling.
- iii. **Multi-stage sampling:** It consists in first selecting the clusters and then selecting a specified number of elements from each cluster. This sample is more comprehensive and representative of the population.
- iv. **Systematic sampling:** It is an improvement over the simple random sampling. This method requires the complete information about the population. There should be a list of information of all the individuals of the population in any systematic way. Now the size of the sample is decided. Let sample size = n , & Population size = N , Now we select each N/n th individual from the list and thus we have the desired size of sample which is known as systematic sample. Thus for this technique of sampling population should be arranged in any systematic way.⁵⁰

⁴⁸ MUKHIA, Supra note 3 at.84

⁴⁹ Ibid 2 at.86

⁵⁰ Ibid at. 87

- v. **Cluster sampling:** The total population (area) is divided into a number of relatively small subdivisions (cluster) and some of these cluster are randomly selected for inclusion in the overall sample.
- a. **Non-probability sampling:** Samples which are not determined by chance, but rather by personal convenience or judgment of the researcher. Which may be of the following different types:
 - i. **Incidental or accidental sample :** Researcher selects any easily available sample he/she come across. In this it is not possible to know whether the sample is representative or not
 - ii. **Purposive or judgment sample:** The researcher uses self judgment in the choice and includes only those items of the universe in the sample, which are convenient to him/her.
 - iii. **Quota sample:** Both Stratification and judgment is used. Sample of prefixed size are taken from each stratum of the universe using judgment sampling method.⁵¹

Methods of data collection : There are various methods of data collection developed by social scientists but due to the lack of development of own methodology by legal scientist; they must rely on the social science methods like *observation, interview, questionnaire, survey and case study* etc which are mostly employed in the empirical or socio-legal research are explained below very briefly.

Observation method: In socio-legal research, one of the most important and extensively used methods is observation. Observation is a method that employs vision as its main means of data collection. Observation is the process of recognizing and noting people, objects and occurrences rather than asking for information. *Creswell defined it as 'the careful watching and recording of somebody or something in a systematic way to establish knowledge'. Williman defined it as 'the systematic recording of observable phenomenon or behaviour in a natural setting'*.⁵² Observations are of many types depending on different basis like, *uncontrolled and controlled observation, participant and non-participant observation, structured and un-structured observation, intra-subjective and inter-subjective observation* etc.⁵³ Some of the merits of this method are; direct & first hand information can be

⁵¹ PANT, Supra note 9 at. 194

⁵² Ibid at. 265

⁵³ MYNENI, Supra note 1 at. 200

obtained, data can be collected in natural condition, less time consuming for the respondents and simultaneous occurrence and recording of the information is possible. Low reliability of the findings, costly, no natural atmosphere can be found for the study and slow process or occurrence of phenomenon is slow etc.⁵⁴ are some of the demerits of this method.

Questionnaire method: Questionnaire method is a method in socio-legal research, in which information is obtained with the help of a questionnaire. In other words with the help of a set of questions all the required data is collected. 'A questionnaire is a formal list of question designed to gather responses from respondents on a given topic'.⁵⁵ In this method the investigator does not go to any respondent for the collection of information. He/she simply mails the questionnaire and collects the required information on the basis of replies received. While defining a questionnaire G. Lundberg has said "Fundamentally, the questionnaire is a set of stimuli to which illiterate people are exposed in order to observe their verbal behaviour under social stimuli." Bogardus has said 'a questionnaire is list of questions sent to a number of persons for them to answer.' Form all the above definitions it is clear that questionnaire is a set of questions which is sent to respondents and the investigator him/herself does not go to the informant for collecting information. The respondent sends reply by filling in the questionnaire and the information is then fed into the research project.⁵⁶ Questionnaire and schedule seems similar in structures but they are different in terms of administration.

(i) Questionnaire and Schedule:-Sometimes two terms are quite confused with each other. But in actual practice there is difference between the two "The questionnaire is generally sent through the mail to the informants to be answered as specified in a covering letter, but otherwise without further assistance from the sender. The schedule on the other hand, is generally filled out by research worker or the enumerator who can interpret the questions when necessary"

In other words the difference between the two is that, whereas in the case of questionnaire no interpreter is needed, in the case of schedule there is an interpreter who interprets the questions and fills in the replies. In the words of Goode and Hatt, "*The questionnaire is differentiated from the schedule*

⁵⁴ HANS RAJ, Supra note 6 at. 221

⁵⁵ PANT, Supra note 9 at. 224

⁵⁶ HANS RAJ, Supra note 6 at 136

*and interview guide by the fact that is self administered.” Thus whereas a questionnaire is self administered, a schedule is not and needs the assistance of someone else to help him in completing his job.⁵⁷ Questionnaires are of many forms. These may broadly divided as *structured /standardized questionnaire* and *un-structured or non- structured questionnaires*. Questionnaire method is less expensive, saves time and energy, It offers great anonymity (ensured the id of the respondent is kept confidential), wide area can be covered etc. are some of the merits and It is self administered so might have unintelligent reply, response rate might be low and opportunity of clarify any issue is lacking etc.⁵⁸ are some of the demerits of this method.*

Interview method: The interview method is a kind of verbal techniques and a direct method of data collection. It is the most commonly used method of data collection in the study of human behaviour. According to P.V.Young, “*Interview may be regarded as systematic method by which a person enters more or less imaginatively into the life of a comparative stranger*”.⁵⁹ Kerlinger defined, it as “*The interview is a face-to-face interpersonal role situation in which one person, the interviewer, asks a person being interviewed, the respondent , questions designed to obtain answer pertinent to the purpose of the research problem.*”⁶⁰ The types of interview may be classified on the different basis as; *i. According to subject matter:* quantitative interview, qualitative interview and mixed Interview. *ii. According to purpose:* clinical interview, treatment interview, selection interview, interview to fulfill curiosity and research interview *iii. According to Formalness:* structured interview and unstructured interview. *iv. According to Number:* group interview and individual interview *v. According to Period of contact:* short contact interview, long contact interview *vi. According to the role assumed by the interviewer and respondent:* focused interview, repetitive interview and non directive interview. *vii. Telephonic Interview.*⁶¹ Some of the merits of this method are; more information can be obtained, greater flexibility, an opportunity of restructure the question is possible, especially in unstructured interview, personal and supplementary information about the respondents can be easily obtained, Adoption of the language is possible as per the ability and

⁵⁷ Ibid at.137

⁵⁸ Ibid at.144

⁵⁹ VERMA, Supra note 20 at.463

⁶⁰ Ibid at.469

⁶¹ P.R JOSHI, RESEARCH METHODOLOGY, Buddha Academic Publisher and distributors Pvt. Ltd., Kathmandu, at.65-67 (2001)

educational lever of the person interviewed etc. And more time consuming & expensive method, especially when large and widely spread geographical sample is taken, the possibility of the bias of interviewer as well as respondent., training and supervising the field staff is needed, sometimes rapport building with the respondents might not be easy of interview method.⁶² etc are some of the demerits of this method.

Survey method: The word 'survey' has been derived from two words 'sur' or 'veeir' which mean 'over' and 'see' respectively. The literal meaning of survey is to see over something from a high place. The term is used for techniques of investigation by direct observation of a phenomenon or collection of information. Many research problems require the systematic collection of data from population or samples of population. These studies are usually called surveys, especially when they are concerned with large or widely spread out groups of people. If they deal with a fraction of a total population, they are called sample surveys. Survey method is used to collect data when a wide geographical area has to be covered. *A survey consists of asking questions of a representative cross-section of the population at a given point of time.* Survey in legal investigation is called legal surveys. It is a process by which quantitative facts are collected about the legal aspects of a community and its activities. Legal survey is a method of data collection that utilizes questionnaire or interview schedule for recording the non-verbal behaviour of respondents. Kinds of Survey are *general and specific survey, regular and ad-hoc survey, preliminary and final survey, census and sample survey.* Similarly depending on the method of conducting surveys there are different types of surveys like: *interview survey, questionnaire survey, telephone interview, group survey and panel survey* etc.⁶³ Some of the merits of this method are; direct contact of researcher with the people, greater objectivity, through and deep study, minimizes bias and maximizes the evidence etc. and some demerits are; very costly, prolonged and time consuming, sampling bias and subject to sampling error, low response rate etc.

Case study method: The credit of introducing case study method in social research goes to Fedric Le Play (1806-1882) who used this method in studying family budgets. Thereafter Herbert Spencer used this method in

⁶² C.R.KOTHARI, RESEARCH METHODOLOGY, METHODS AND TECHNIQUES, The New Age International (P) Ltd., New Delhi, India, at. 98-99 (2001)

⁶³ MYNENI, Supra note 1 at. 226-229

studying ethnographic studies. *Dr. William Healy, a psychiatrist was among the first to adopt this case study method in his work with delinquents. The case Study method is the method of exploring and analyzing the life of a social unit that might be a person, a family or an institution, or a community is called case study.* The case study method is a method which aims at studying deeply and thoroughly different aspects of a social unit.⁶⁴ The facts of the unit i.e. cases may be obtained from many diverse source like personal documents and life history documents etc.⁶⁵ There are six types of case studies such as; i. a *group or a community case study* ii. *casual comparative studies* iii. *activity analysis* iv. *content or document analysis* v. *a follow-up study* and vi. *trend studies*.⁶⁶ Some of the merits of this method are; subjective aspects, intensive study possible, no need of sampling, increase in knowledge etc. and difficult to study objectively, too much dependence of memory, data of information are not collected in a systematic order, more time consuming and costly etc.⁶⁷ are some of the demerits of this methods.

Processing, analysis and interpretation of data: The data collected are to be processed by editing, coding, classification and tabulation with a view to reduce them to manageable proportions. The quantitative or qualitative raw data are processed and then the processed data are analyzed with two methods of analysis like as; descriptive and casual analysis and inferential/statistical analysis. Only after a careful and systematic processing, the data collected will lend itself for statistical treatment in which different statistical tools like measures of central tendency, dispersion, skewness, ANOVA, index numbers, time series analysis, correlation and regression etc.⁶⁸ are used for analysis and then the data is presented in various ways in table, graphs, charts etc. and finally interpreted meaningfully and conclusions are drawn in the form of new information, theory, facts and solution for the practical problems. The outcome of the research mainly depends on the careful processing and use of appropriate methods of analysis of the data therefore researcher must be very much alert and focused in this stage.

9. Conclusion

The term research simply refers to a systematic method to discover, develop and verify knowledge similarly legal research is systematic finding law and

⁶⁴ HANS RAJ, *Supra* note 6 at. 248

⁶⁵ MYNENI, *Supra* note 1 at 233

⁶⁶ MUKHIA, *Supra* note 3 at. 149

⁶⁷ KERLINGER, *Supra* note 7 at. 256-259

⁶⁸ JOSHI, *Supra* note 61 at. 151

making advancement in the science of law. In legal research; separate tools, techniques and methods have not been developed so the legal Researchers in the absence of their own well-developed methodology, have to place their reliance on the social science techniques and research methodology, therefore legal research has been also termed as socio-legal research or interdisciplinary research. Generally most of the systematic investigations of law are academic or mainly based on the ambit of legal concept or legal doctrine. Whereas inquiry into social dimension of law or discovery of functional aspect of law and or behavioral pattern of people in response to law or impact of the legal process upon people, their values and institutions etc. can only be assessed by empirical or socio-legal research method of study which helps to understand the law in action and contributes to identify problems so that proper remedy can be offered ultimately the success and effectiveness of a legal system can be ensured. It has been felt an urge and importance of empirical or socio-legal research which has been emphasized enormously after the emergence of sociological jurisprudence having the philosophy of task of law as a social engineering and as an active instrument of socio-economic justice. The operational facets or functional aspects of law intending to change or mould human attitudes and to bring some socio-economic transformation in the society is more important than analyzing law as it exists in the book. In Nepal apart from very few instances of empirical or socio-legal studies conducted in the law making process and study about behavioral pattern and attitude towards some promulgation by very few legal institutions established for the purpose of legal research and development but they seems ineffective and just reminded as the positive considerations and people participation in law making process has been ignored also therefore most of the social as well as welfare statutes or legislation are largely remaining unpractical, idle and worthless.

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