Relevance of Right to Information Act, 2005 in Socio-Legal Empirical Research

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ABSTRACT

Socio-Legal Empirical Research deals with the quantitative and qualitative accumulation of facts to justify the law and realism of it in the practical sphere. This methodology is often considered as the pedagogy to various methods which are used to derive conclusions and establish results leading to social reforms and legal or policy formulations based on evidences. Applications filed under the Right to Information Act, 2005 can be used to collect data both qualitatively and quantitative in nature. The data collected however, is facts assimilated wherein the researcher is expected to assess and infer the required while discard the rest. The paper discusses the socio-legal methodology and the applications filed under the Act as a tool to collect data under the mechanism.

1. INTRODUCTION

Socio- legal research methodology has often been applied to understand the effectiveness of the existing legislation and the need of the reforms in law of any nature whatsoever. Empirical analysis to determine perceptions is a predictive method and can and does influence the law. Inferences drawn can be strong and effective to produce results which can either be far reaching to be path breaking and or predictive leading to rejection. Investigations in the law have often rejected meritorious evidence procurable from another expanse of cognition be it of any social sciences. One of the constant endeavours of legal research has been to illuminate social and legal issues and to view the individual in relation to the socio- legal system. Such studies in legal research often take the recourse of socio- legal research methodology. The predictive aspect of social science research relates directly to the basic component of a legal order - the individual.

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Definitive tools cannot be used to collect data in social researches or legal researches where the results are person, area or circumstances specific and oriented. The data collected will be heterogeneous in nature and circumvent the entire utility of an effective tool. For instance, in child custody and domestic disputes no straight jacketed information can lead to policy formulation and evidence to be considered has to be from a case to case basis and dependant on multiple variables[2]. Socio-Legal Research deals with legal research substantiated by evidences and justifications to questions as the researcher would be interested in establishing through their work. There are various ways of collecting the data for such research such as surveys, questionnaires etcetera. Applications filed under the Right to Information Act, 2005 can also be used to collect data and provide substantial support in socio-legal research methodology. Since the enactment of the statute in the year 2005, applications filed under the statute have been one of the most commonly used methods by research scholars to collect data and evidence for their research.

Legal research plays a crucial role in the social and legislative awakening of the masses at large. When the issue in question is social in nature, any information is to be checked and verified with utmost precision. Through the socially empowering statute, information can be collected from public authorities i.e. all government bodies and organisations substantially financed by the government as a part of the research and evidence of facts asserted thereto. One of the practical uses of Right to Information Act, 2005 is in the field of education. The red flags in the zone of evidence based legal research can be easily crossed with the powerful tool of applications filed under the statute. However, the mechanism has its own share of advantages and disadvantages. With the data collected, the overarching questions for the research scholars remain as to how to fish out the relevant information from the reply to the applications, how to organise it and how to interpret the results. The research scholar of this article has used right to information applications to collect data for her doctoral thesis.

The first part of the paper discusses the socio-legal research methodology to emphasise the needs and requirements posed by the particular methodology to understand the realms of law or legal research. In the subsequent part of the paper the appropriateness and relevance of data collected through applications filed under Right to

[2] Ira P. Robbins, The Admissibility of Social Science Evidence in Person Oriented Legal Adjudication, Indiana Law Journal, Volume 50 Issue 3, Article 5, Digital Repository @ Maurer Law. As available at http://www.repository.law.indiana.edu/ilj/vol50/iss3/5 last accessed on 17.02.2019

Information Act in such research is elaborated. The data collected through such applications can be both qualitative and quantitative in nature. The advantages and disadvantages of using the mechanism to collect data is discussed and the paper concludes as to how though an effective tool to collect data in the socio-legal approach, the data collected and produced in an evidence based research may have its own share of role-changing features in the output of such research along with limitations in terms of application.

2. FEATURES OF SOCIO-LEGAL EMPIRICAL RESEARCH

One of the relevance of legal research is to have operational discourses to deal with and to identify the normative aspects of legal application in civil procedure. The tool used to examine the realm of law has to be precise and specific to align with the principles of law. Socio- Legal research is essentially for the inquiry on real law. The law in action is assessed by adopting qualitative and quantitative methods from various social sciences and assess law as a social phenomenon. It studies and covers a range of disciplinary contexts and appreciates interdisciplinary relationships. It is at times important to integrate the results of certain social studies into research. It unites to complement the legal education and provide a shape attracting the attention of scholars to an unexplored facet or direction altogether. For instance, law has often been seen to interface with psychology, sociology and philosophy to give better results.

For a legal theorist, it is a task to understand the intersection of traditional legal research with the other branches of social sciences. Fragments from other disciplines could be picked up to serve new purposes. Deeper understanding of the multiplicity of law reveals inevitable diversity of theoretical legal paradigms and corresponding variety of methodological approaches to legal research. Empirical socio-legal research is challenging as it is difficult to obtain data and equally difficult to interpret the data obtained. The control variables and results are not in the control of the researcher and limitations are way too many. The results are clear but can the factors be pinpointed is a concern. Developing the process and the further fine tuning of the results is a daunting task. Boundary between method and methodology is permeable in nature and the separation of two is a herculean task in itself. While observing the research sites, conducting interviews, preparing questionnaires, pulling through archives depend on the methodological approach; the process of aggregating and analysing data depends on the sources and the details or heads under which they

were collected. It is however how the results are protracted and how the resulting data is integrated into the findings ultimately which are of great importance.

Legal research is a kind of social science and has typical issues of its own. Legal researchers have to take into account the social and economic consequences because they are the only available criterion. Any research has to be initiated to find a solution to a question- proving or disproving the hypothesis. Research in itself is an important tool for law reform and change in the society. Law is an interaction between the society and the social relations arising thereto[3]. All legal writing essentially has underlying conceptual framework. For socio- legal methodology it is crucial for the researcher to opt for simplistic instrumental techniques such as surveys but to also understand the methodological justification underpinning the reason to use a particular method. The researcher is expected to understand the scope of entry of social scientific knowledge and methods. Socio-legal methodology is often stumbled upon at the proposal stage of any legal research and the reflection on the fundamental yardstick to be used by the researcher leads him or her to the most useful methods of establishing a relation between the factors and then establishing the rationale used in the method.

Socio-legal methodology draws upon a view that law is an inevitably social phenomenon representing the product of collective thought and action. In adopting a socio-legal approach, the researcher often faces the burden of justification as many instances could be shown and would lead to distinctive inferences altogether. Socio Legal research draws upon legal realism and its focus is on how law actually functions in society. It attempts to chart the collision of law with real world actors and institutions. Thus the methodology has its own unique share of characteristics and requirements. The tools have to be specific and sufficient to understand the nature of data expected out of such research[4]. It is important to collect and analyse all relevant data and the least of assumptions should be presented before the legislatures to make the output of research reliable and authentic. While exploring the knowledge and understanding of law, an interdisciplinary investigation becomes the keystone. It can provide and aid the understanding of the

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[3] Vijay M Gawas, Doctrinal Legal Research method a guiding principles in reforming the law and legal system towards the research development, International Journal of Law, Volume 3 Issue 5 September, 2017 pp. 128-130, ISSN: 2455-2194

[4] As available at https://www.create.ac.uk/methods/methodological-challenges/socio-legal-empirical- research/ last accessed on 17.02.2019.

legal issues in the social-legal jurisprudence from the multi-dimensional aspects.

Scholars execute empirical legal research in four steps- design the project, collect and code the data, conduct analyses and present results. Data collection and coding entails translating information in a way that the researchers can make use of and unless the piles of data is analysed the study cannot proceed. Data analysis consists of typically two activities- summarising the data collected and analyse the facts to draw inferences on facts not known to the researcher[5]. Most empirical legal researchers simply do not have the luxury of analysing the data they developed in an experiment i.e. experimental data and instead they should made use of the data generated by the world i.e. observational data. This sustainably complicates the task of empirical legal research. Statistical techniques must be invoked to assess the observational data while for experimental data, to generate the random assignment to treatment and control groups while effectively minimizing the confounding effects of other variables. As a general rule, researchers should collect as much data as resources and time allow because basing inferences on more data rather than less is always preferable and if researchers cannot collect data on all members of the population of interest as per their research proposal or outline then they must invoke selection mechanisms that avoid selection bias (mechanisms that don't bias their sample for or against their theory). For large- n studies (where n=number of participants) only random probability sampling meets this criterion. A random probability sample involves identifying the population of interest (all stakeholders) and selecting a sub- set (the sample) according to known probabilistic rules. To perform these tasks, the researcher must assign each member of the population a selection probability and select each person into the observed sample according to these probabilities.

Research questions in empirical legal studies come from everywhere and anywhere and the challenge while collecting data is to tighten the fit between the question asked and the question answered. Applications under the Act can be used to collect data in the empirical legal research. Researchers can implement random sampling in various ways depending on the nature of the problem and the nature of the data collected. Qualitative methods are easily embraced in social sciences and are also considered as an alternative for those seeking a mode of enquiry other than quantitative methods. Information from various sources can both be inducted and deducted before drawing

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[5] Lee Epstein and Andrew D. Martin, Quantitative Approaches to Empirical Legal Research, Center for Empirical Research in the Law at Washington University, Available at http://jstor.org last accessed on 15.02.2019

conclusions about the problems and documents could be reviewed for the same. Applications under the Act can also provide a researcher with documents and photocopies of the same to review and study.

3. USE OF APPLICATIONS FILED UNDER RIGHT TO INFORMATION ACT, 2005

Applications filed under the Right to Information Act 2005 (hereinafter referred to as the "Act") can be one of the tools used to collect the quantitative and qualitative data for a fruitful and robust socio-legal research. The Act has proved to be a powerful tool for common people and increased the level of transparency. Data which was often protected and not divulged to the public at large can now be sought under this statute and accessed with ease. This expanded social opportunities and good governance. There are computerised information centres/e- governance centres at the development block and village levels in various states of the nation. Such e-governance initiatives not only provide a citizen-centric government and reduce operational cost but also explore the efficiency of such initiatives for the realisation of larger goals- transparency and accountability. It provides timely, efficient and corruption free services with reduced scope of manipulation and greater precision of information from reliable and authentic sources. Through this Act, service and service provider details are made available in proactive manner and integrated for citizen access though National and State portals which provide basic information on government programmes and services. E- governance can be rightly established to have been furthered by Information Technology[6] as the data available through the Act can be accessed in digital forms and by executing signatures electronically. It has lowered costs and improved the quality and convenience.

Research is an activity of indulgence which needs a back-up of resources for useful outputs and long-term commitment. The Act provides an opportunity to an informed citizenry making the administration people centred, fair and democratic. Passed as a law to secure transparency, accountable and public participatory governance, applications filed under the statute can also be used to obtain otherwise inaccessible data to conduct legal research. Information can be demanded from the public authorities i.e. all government bodies and organisations substantially finances by the government established

[6] As available at https://www.ijser.org/researchpaper/Right-to-Information-Act-A-tool-for-good-governance- and-social-change-through-Information-Technology.pdf Last accessed on 10.03.2019.

including Non-governmental organisation , all public sector undertakings, all bodies and institutions and bodies of self government established or constituted by law made by the parliament or state legislature and so on[7].

Law reform agencies need to review an impact of relatively recent legislation and find out objectives of such legislation to recommend further changes. The documentary resources outside traditional legal sources are often the source of such information collected. While preparing for the research proposal to be submitted for the post-doctoral research coursework in the year 2015 to be precise, the researcher was suggested to conduct a pan India study of the implementation of Section 89 of Civil Procedure Code to understand the trend of dispute resolution mechanism of mediation in the states of India. It sounded ambitious and advantageous from the researcher's perspective. However, as an overzealous member stepping into academics the most daunting task was to determine what method of collecting data would be the appropriate means with least financial strain on the one conceding. Though not heard of as a common practice, the researcher initiated with an application filed in the State of West Bengal in the appropriate government office. The letter was not responded to in the first instance within the time period specified by the act and then as suggested by an insider in that particular government office, the same application was modified to include the information that the citizen seeking the information would only use it for academic purposes. A fresh set of applications were filed and out of the series of applications filed in 29 states of the country, 10 states replied to the applications and only three complied with the format in which the information was requested.

4. ADVANTAGES AND DISADVANTAGES

The mixed method of obtaining both quantitative and qualitative data through these applications provides the scope of a holistic socio-legal research and a robust data bank to analyse and infer contexts from. The challenges are the reliability, the updating of data with the passage of time and the compilation of the data in the specific format to draw inferences when the amount of data is huge, nature is heterogeneous and the control variables are difficult to assess.

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[7] As available at https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=https:// www.google.com/ &httpsredir=1&article=3087&context=ilj last accessed on 17.02.2019

One of the advantages of collecting data though applications filed under the Act is the cost-benefit analysis of the process. Time is the essence of these applications and the authorities have to reply ordinarily within 30 days of such receipt of application. The authenticity of the data collected is higher than any other secondary sources as it is maintained with the authorities and provided as per the entries in records which over a period of time would be the primary and the direct source of such information.

The applications can gather huge amount of data in both quantitative and qualitative format if drafted meticulously. However, the data may not be available in the same and exact format as applied and can also be one of the grounds on which the authorities totally deny providing any information at all. The huge data collected requires meticulous collating and uniform arrangement. Two states on two questions can provide vast range of data which is similar but unique in their own presentation. In the research conducted by the author, the data collected on the effectiveness of Section 89 of Civil Procedure Code was provided differently by the State of Karnataka and Gujarat for a period of 5 years. While Karnataka provided data year wise and district wise, the data provided by Gujarat was month wise in the preceding 5 years and the district wise data was not provided at all. While analysing the data for the same research, the researcher will have to file another application, which may or may not be replied to, in either of the states to obtain uniformity on data and prepare a complete set.

Time is also a drawback for the data collected. If the data is collected over a period of time it has to be regularly updated in the same manner and format which by itself is a tedious task. For example, when the research commenced in the year 2015, the data collected in the preceding five years was relevant but when the study is concluded in the year 2020, the data so collected and the inferences drawn may be outdated and not viable option. Providing such data would also mean walking the extra mile for the authorities who would otherwise do the same at their leisure time thus creating a roadblock in the process.

One of the disadvantages of using the applications for the research is the difference of rules in the various states. While the application specifically mentions the right of filing application, the rules govern the process. Each state is given the liberty to frame their own rules in respect of filing procedure, fees to be collected for each application and the nature of applications which can be duly responded to. Some states and authorities have their specific mode of filing of applications and thus refuse to provide information as sought. For instance, one of the

applications filed with the Bihar State Legal Services Authorities was replied with no data whatsoever, because the office does not maintain the data in the format sought by the researcher. The Authorities also failed to specify the method or if any data was at all available with them on that particular subject. Nevertheless, applications in certain states though received were never replied to nor was any appellate authority specified.

One of the major reasons for such response and a disadvantage for legal research is the administrative difficulties and failure to implement the Act by itself even after 12 years of its enactment. Applications are considered to be harassing and thus the authorities do not bother to even reply for the sake of information only. This however is a roadblock for a legal researcher because failure to obtain data through such applications forces them to incur higher cost and spend more time than required to collect data and complete their set of information to derive inferences.

5. CONCLUSION

It is easier said than done. Socio-legal research methodology is a conundrum of methods and a permutation combination of few is often used by the researchers to understand the nuances of the law in the realistic helm of affairs. Applications filed under the Act can be an effective way to collect data to conduct socio-legal research. However, the applications have to be carefully drafted to include both quantitative and qualitative aspects of the information collected. The researcher should be aptly equipped to deal with the assessment of the data collected and also update the same with the progress of time in their research. Time spent in collecting the data and the quality of the same decides the fate of research. Only a technical and justified assessment of data would lead to correct and acceptable inferences.

Researchers will agree socio-legal research methodology is too wide a term to be used for the purpose of a specific research and is often substituted by quantitative or qualitative research methodology. Legal research is labelled as empirical when the reliance is placed heavily on the methods and methodologies drawn from the social sciences—either as applied to legal materials themselves, or as applied to actors in their interaction with a legal system, legal order or “law” as broadly understood. While questions of theory necessarily interact with methods of gathering and analyzing data, the focus is broadly on exploring and situating those aspects and types of research which are

unlikely to be familiar to students steeped in reflective, doctrinal, philosophical methods of legal analysis. Empirical research really helps in understanding how the law works and the associated phenomenon thereto. The applications under the Act can be an appropriate mechanism to obtain such data but the qualitative aspect of such information obtained through the applications may require analysing the text and stressing on contextual and subjective accuracy over the generality.