

## Appendix A

### The Gentoo Code

'Gentoo' is a most controversial word as regards its meaning in the whole legal history of India. Field has pointed out, "The word 'Gentoo' is derived from the Portuguese word '*Gentio*' or a '*Gentite*' which came to mean '*a native of India*' i.e. a Hindu."<sup>1</sup>

Nathaniel Brassey Halhed in his *Translator's Preface to Gentoo Law* said, "The word 'Gentoo' has been and is still equally mistaken to signify the proper sense of the term as was used by the Professors of the Brahminical religion. In its etymological sense the word 'Gent' or 'Gentoo' means 'animal' and in its more confined sense, 'mankind'....The four great tribes have each of their own separate appellation, but they have no common or collective term that comprehends the whole nation under the idea affixed by Europeans to the word 'Gentoo'. Possibly the Portuguese on their first arrival in India, hearing the word frequently in the mouths of the natives as applied to mankind in general, mistook it for the domestic appellation of the Indians themselves, perhaps also their bigotry might force them from the word 'Gentoo' a fanciful allusion to 'Gentile', a Pagan."

Sir E. Hyde East in 1830, speaking before the Committee of the House of Lords, observed: "Whether the term 'Gentoo', as used in the Warren Hastings Plan of 1772, was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds of India, is perhaps very difficult to be told at this time of the day."

Some authorities are of the opinion: "Hindoo is not the word by which the inhabitants of India originally styled themselves, but according to the idiom of the language 'Jamboodepee'; and it is only since the era of the Tartar Government that they have assumed the name of Hindoos, to distinguish themselves from the conquerors, the Muslims."

#### 1. Origin of Gentoo Code

Warren Hastings, Governor of Bengal, first of all prepared a systematic plan in 1772 for the proper regulation of Judicial and Executive machinery of the Company's Government at Bengal. Article 27 of the Plan of 1772 provided: "That in all suits regarding inheritance, marriage, caste and other religious usages or institutions, the laws of Koran with respect to Mohammedans and those of Shastras with respect to 'Gentoo'. Thus the word 'Gentoo' was for the first time legally recognised by Warren Hastings. He took the initiative to investigate the principles of the 'Gentoo Religion' and to explore the customs of the Hindus.

Warren Hastings, therefore, invited some famous Brahmins, who were learned in the study of Shastras, from all parts of the kingdom at Fort William in Calcutta. Apart from this, many ancient and modern authoritative books were also collected. They finally prepared a 'Code of Gentoo Laws' in Sanskrit. Later on it was translated into Persian by one of its authors. In 1775 it was translated from the Persian into English by Nathaniel Brassey Halhed, a young man who when at Oxford had been

1. Field's *Regulation of Bengal*.

led to study Arabic by Sir William Jones and had as a 'Writer' in India attracted Hastings' attention. This was published in London in 1776. Other editions of this Code appeared in 1777 and 1781 as well as a French translation at Paris in 1778. In the opinion of Rankin, "The Gentoo Code suffers from the Persian translation being but a loose and inaccurate version of the original."

"In this Code both Substantive and Adjective Laws are mixed up. It is divided into twenty-one chapters and most of the chapters are sub-divided into what is called by Halhed, 'Sections' and each section has been further sub-divided into 'paragraphs' corresponding to the sections of the modern Anglo-Indian Code."

## 2. Arrangement of Halhed's 'Gentoo Code'

Chapter 1 Lending and Borrowing (consisting of 5 sub-divisions or Sections).

Chapter 2 The Division of Inheritable Property (16 Sections).

Chapter 3 Justice (11 Sections).

Chapter 4 Trust or Deposit (one section divided into paragraphs).

Chapter 5 Selling a stranger's property (one Section divided into paragraphs).

Chapter 6 Shares (2 Sections).

Chapter 7 Gift or Alienation by Gift (one Section).

Chapter 8 Servitude (3 Sections).

Chapter 9 Wages: Section 1 Wages of Servants, Section 2 Wages of Dancing Girls.

Chapter 10 Rent and Hire (One Section).

Chapter 11 Purchase and Sale (2 Sections).

Chapter 12 Boundaries and Limits (one Section).

Chapter 13 Shares in the Cultivation of Lands (One Section).

Chapter 14 Cities and Town and the Fines for damaging a Crop (One Section).

Chapter 15 Scandalous and Bitter Expression (2 Sections).

Chapter 16 Assault (3 Sections).

Chapter 17 Theft (6 Sections).

Chapter 18 Violence (One Section).

Chapter 19 Adultery (8 Section).

Chapter 20 What concerns women (One Section).

Chapter 21 Sundry Articles (10 Sections).

Section 1—Of Gaming.

Section 2—Finding anything that was lost.

Section 3—The fines for cutting trees.

Section 4—Tax upon buying and selling goods.

Section 5—Quarrels between father and son.

Section 6—Serving unclean victuals.

Section 7—Punishment on a Soodar for reading Vedas.

Section 8—Properties of punishment.

Section 9—Adoption.

Section 10—Sundries.

### 3. Criticism of the Gentoo Code

The Hindoo criminal law was, in ancient times mostly based on the provisions of 'Dharam Shastras' under the heading of 'Vyavhara'. The Gentoo Code was later on prepared during the Governorship of Lord Warren Hastings to give a picture of Hindu criminal law. No doubt Duncan, on the recommendation of Lord Cornwallis in 1783, was also indebted to the 'Code of Gentoo Law'; still it was a defective Code as it was not the true representation of Hindu criminal law. From the time the Dharam Shastras were first prepared in the year 1775 A.D., much water had gone under the bridge for which no consideration was given by the authors of Gentoo Code.

Rankin has well remarked,<sup>2</sup> "The Hindu criminal law as presented in the 'Gentoo Code' is full of impracticable and absurd directions which cannot represent any systematic practice. The Gentoo Code in 1775 represented the notions of a long dead past as regards criminal law. It is not easy to see how Hindu society with its multiplicity of independent Chiefs each exercising power, could very well give rise to a coherent system deserving to be called a Hindu Law of Crime. What is put forward by the text-writers as legal rule is often no more than the fanciful suggestion of a Brahmin writer legislating *in vacuo*. A long *catena* of absurdities could be quoted from the Gentoo Code; in many cases the absurdity consists in a perverted notion of 'making the punishment fit the crime'; in others in the minute distinctions upon which the tariff of fines is built; in others in the savagery with which the crimes are punished when committed against Brahmins or persons of higher caste than the wrongdoer."

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2. Rankin, *Background to Indian Law*, 190.

## Appendix B

# The Union Territories

### 1. Origin and the Constitutional set-up

The States Reorganisation Act, 1956 played an important role in shaping the territories of Provinces in the Indian Union. As a result of it substantial changes were made in the Constitution of India by the Constitution (Seventh Amendment) Act of 1956. The Amendment reduced the four categories of States to two only. All the States under A, B and C Parts were reorganised into one category. States under Part D were treated separately as the Union Territories. As a result of the States Reorganisation Act, 1956, six Union Territories were created, namely, Delhi, Himachal Pradesh, Manipur, Tripura, Andaman and Nicobar Islands and Laccadive, Minicoy and Amindivi Islands.

The Constitution (Seventh Amendment) Act, 1956 reconstituted the provisions of Articles 239 and 240 of the Constitution, as follows:

Article 239: Administration of Union Territories:

“(1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.”

Article 240 empowered the President to make regulations for the peace, progress and good government of the Union Territories of (a) Andaman and Nicobar Islands, (b) Laccadive, Minicoy and Amindivi Islands.

The Territorial Councils Act, 1956 provided for the establishment of Territorial Councils in certain Union Territories.

The Constitution (Tenth Amendment) Act, 1961 added Dadra and Nagar Haveli, which were so far under the domination of Portugal, to the list of the Union Territories. Goa, Daman and Diu, which were liberated from Portuguese domination, were also added to the list of Union Territories by the Constitution (Twelfth Amendment) Act, 1962. Pondicherry and Karaikal, Yenam and Mahe were known as “French Settlements in India” and were actually under the French Government. Under an agreement the Government of France handed over these to the Government of India in 1956.<sup>1</sup> These areas were added to the list of the Union Territories<sup>2</sup> by the Constitution (Fourteenth Amendment) Act, 1962.

The Government of India decided in 1962 to set up a representative form of government in the areas under the list of Union Territories. In this connection the

1. The representatives of India and France signed a Treaty on May 28, 1956 in New Delhi transferring the ‘French Settlements in India’ to India. This Treaty was ratified by the French Parliament in July, 1962.

2. Pondicherry, etc. were added on November, 6, 1962 to the list of Union Territories.

Constitution (Fourteenth Amendment) Act, 1962 was enacted. Its statement of object and reasons provided:

"It is proposed to create Legislatures and Council of Ministers in the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry broadly on the pattern of the scheme which was in force in some of the Part C States before the reorganisation of the States. The Bill seeks to confer necessary legislative powers on Parliament to enact laws for this purpose through a new Article 239-A which follows generally the provisions of Article 240 as it stood before the reorganisation of the States."

It was a very important landmark in the constitutional history of the Union Territories. It gave them a representative form of government based on adult franchise. The Constitution (Fourteenth Amendment) Act, 1962 inserted new Article 293-A in the Constitution. It provided for the creation of local Legislatures or Council of Ministers or both for certain Union Territories.

The Union Territories Act, 1963 established a new legislative and administrative set-up in the Union Territories. It established Legislatures and Council of Ministers in the Union Territories just as in Part C States.<sup>3</sup> Provision was also made to allot one seat to the Union Territory of Pondicherry in Lok Sabha and two seats to Goa, Daman and Diu by direct elections.

On June 9, 1966 the Government of India declared Chandigarh a Union Territory and to serve as the seat of Government for both Haryana and Punjab.

In 1969, the Constitution (Twenty-second) Amendment Act was passed in pursuance of which Parliament passed the Assam Reorganisation (Meghalaya) Act, 1969 for the creation of the Autonomous State of Meghalaya within Assam. Then as an administrative measure the North-Eastern Council Act, 1970 was passed extending over Meghalaya, Union Territories of Manipur and Tripura and N.E.F. Agency. This Act was replaced by a similar Act of 1971.

District Councils were established in the Union Territory of Manipur by the Manipur (Hill Areas) District Councils Act, 1971.

However with the North-Eastern Areas (Reorganisation) Act, 1971 Manipur and Tripura ceased to be Union Territories and became States. Two new Union Territories of Mizoram and Arunachal Pradesh were established by the same Act. The State of Meghalaya was also established. For all these States the High Court at Gauhati has jurisdiction.

The existing Union Territory of Himachal Pradesh became a State with the passing of the State of Himachal Pradesh Act, 1970.

By Act 34 of 1973 the name of the Union Territories of Laccadive, Minicoy and Amindivi Islands was altered to "Lakshadweep". The position as it stands today (1988 July) is that there are seven Union Territories: Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh.

Goa has been granted statehood in 1987 by the Goa, Daman and Diu (Reorganisation) Act, 1987. Mizoram has been declared a State by the State of Mizoram Act, 1986 and Arunachal Pradesh by the State of Arunachal Pradesh Act, 1986.

3. See The Government of Part C States Act, 1951.

Same is the case with Manipur and Tripura. They were granted statehood by the North-Eastern Areas (Reorganisation) Act, 1971.

## 2. Legislative System

The Government of Union Territories Act, 1963 provided legislative bodies for Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry. The members are chosen by direct election and are forty in the case of Himachal Pradesh and thirty for Manipur, Tripura, Daman and Diu and Pondicherry. Goa, after being declared a State<sup>4</sup>, has now got forty members. The Central Government is authorised to nominate three persons. The term of the Assembly is five years.

The Assembly can make laws for the whole or any part of the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution insofar as any such matter is applicable in relation to Union Territories. This power does not derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for a Union Territory or any part thereof. If any provision of a law made by the Legislative Assembly of a Union Territory is repugnant to any provision of a law made by Parliament then the law made by the Parliament will prevail. The Administrator can summon the Legislative Assembly, in the respective Union Territory. He has also the power to prorogue and dissolve the Assembly.

Parliament is empowered to create by law for any of the Union Territories a legislature and/or Council of Ministers with such Constitution, powers and functions in each case as may be specified in the law [Article 239A-(2)]. Such law is not to be regarded as an amendment of the Constitution under Article 368. With regard to Union Territories there is no distribution of legislative power.<sup>5</sup> President may make regulations<sup>6</sup> and issue ordinances for the Union Territories.<sup>7</sup>

Delhi became a Union Territory on November 1, 1956 and since then it has been administered by the Union Ministry of Home Affairs with the aid of an Advisory Council. The Delhi Administration Act, 1966 provided for a Metropolitan Council for Delhi consisting of fifty-six directly elected persons and five nominated persons. It is empowered to make recommendations for proposals for undertaking legislation just like other Union Territories under the Constitution.

## 3. Judicial System

Before 1956 the Parliament was empowered to extend the jurisdiction of a High Court to any area outside the State where the main seat of the High Court was situated. The Constitution (Seventh Amendment) Act, 1956 restricted the power of Parliament to extend the jurisdiction of the High Court only to the Union Territories. The Parliament is empowered under Article 231 to establish a common High Court for two or more States or for two or more States and a Union Territory. Under Article 241(1) the Parliament may by law constitute a High Court for a Union Territory or declare any court in any territory to be a High Court. The same

4. Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987) of 30-5-1987: Gazette of India, 26-5-1987, Pt. II, Sec. 3(ii)/Ext. Pt. 2(No. 255).

5. *Satpal & Co. v. Lt. Governor of Delhi*, AIR 1979 SC 1550.

6. Art. 240(1).

7. *Supra* n. 4.

constitutional provisions apply to Union Territory High Court as they apply to High Courts of the States (Art. 241-2). Under Article 241(4) the Parliament may extend or exclude the jurisdiction of any High Court to, or from any Union Territory.

According to the Constitution, the hierarchy of subordinate courts in the Union Territories is the same as in the rest of the country. In every district, on the criminal side there is a great uniformity as the Code of Criminal Procedure applies to all courts. In each district, the Sessions Court presided by the Sessions Judge, is the highest court on the criminal side. Below the Sessions Judge there are Courts of Magistrates of the First, Second and Third Class.

The Sessions Judge and the District Magistrate are empowered to superintend over the courts subordinate to them. Appeals from the Magistrates of Second and Third Class lie to the District Magistrate whereas appeals from the Magistrate of First Class lie to the Sessions Judge. Appeals against the decision of the Sessions Judge lie to the High Court.

On the civil side, the Court of the District Judge is the principal civil court in the district. In civil cases it exercises both original and appellate jurisdiction. It has also power to superintend over the subordinate civil courts in the district. In some Union Territories, Munsiff's Courts presided over by Munsiff exercise civil jurisdiction.

The following statement shows the highest court in each Union Territory and the High Courts having jurisdiction upon them:

Sl. No.	Name of Union Territory	Highest Court	High Court's jurisdiction
1.	Andaman and Nicobar Islands	Sessions Court	Calcutta H.C.
2.	Chandigarh	Sessions Court	Punjab and Haryana H.C.
3.	Dadra and Nagar Haveli	District Court	Bombay H.C.
4.	Delhi <sup>8</sup>	Sessions Court	Delhi H.C.
5.	Lakshadweep	Sessions Court	Kerala H.C.
6.	Pondicherry	Sessions Court	Madras H.C.
7.	Goa, Daman and Diu	Judicial Commissioner's Court	—
8.	Arunanchal Pradesh Mizoram	District Court District Court	Gauhati. Gauhati.

8. The High Court of Delhi was newly created and it started functioning from 31st October, 1966.

*Appendix C*  
***Alphabetical Table of Indian Legal Periodicals<sup>1</sup>***  
***and Law Reports<sup>2</sup>***

- Academy Law Review (Kerala Law Academy, Trivandrum)  
Accident and Compensation Cases (Delhi)  
Accidents Claims Journal (12, Malkaganj, Delhi) (1966- )  
Accidents Judicial Reporter (1992- )  
Administrative Tribunal Cases (Eastern Book Co., Lucknow) (1986- )  
Administrator (Lal Bahadur Shastri National Academy of Administration, Mussoorie)  
Agra High Court Reports (1866-1868)  
Ajmer-Merwara Law Journal (1927-1956)  
Aligarh Law Journal (Faculty of Law, Aligarh Muslim Univ., Aligarh)  
All India Civil Law Journal (1980- )  
All India Criminal Law Cases (1980- )  
All India Hindu Law Reporter (1975- )  
All India Land Law Reporter (1979- )  
All India Rent Control Journal (1969- )  
All India Reporter (A.I.R. Ltd., Nagpur) (1914- )  
All India Service Law Journal (1973- )  
All India Service Law Reporter (1967- )  
All India Transport Accident Cases (1983- )  
All India Tribunal Cases (1958-1961)  
Allahabad Civil Journal (1978- )  
Allahabad Criminal Cases (1964- )  
Allahabad Criminal Reports (1953- )  
Allahabad Criminal Rulings (1977- )  
Allahabad Law Journal (A.I.R. Ltd., Nagpur) (1904- ) Vol. 1 to 26 till 1928 after which citation by year  
Allahabad Law Reporter (1920-1947)  
Allahabad Law Reports (1975- )  
Allahabad Law Times (1923- ) Acts etc. only  
Allahabad Rent Cases (1977- )  
Allahabad Weekly Cases (1975- )  
Allahabad Weekly Notes (1881-1908)  
Allahabad Weekly Reporter (1935-1977)  
Andhra Law Times (Dilsukhnagar, Hyderabad) (1954- ) citation by year

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1. Based on list published by the Indian Law Institute and reproduced by H.C. Jain: "Using a Law Library": *ILI: Legal Research and Methodology*, 1983 (Tripathi), 401-421, 411-413.  
2. 22 *JILI* (1980) 233: V.G. Ramachandran, *Law Reporting and Law Reports in India*, 218-239: with some later ones added.



- Andhra Pradesh Law Journal (1969- )  
Andhra Pradesh Law Journal (Criminal).  
Andhra Pradesh Sales Tax Journal  
Andhra Weekly Reporter (1955- )  
Annual Survey of Indian Law (Indian Law Institute, New Delhi)  
Arbitration Quarterly (Journal of the Indian Law of Arbitration, New Delhi)  
Asian Labour (ICFTU Asian Regional Organisation, New Delhi)  
Assam Law Reports (1960)  
Awards Digest (Journal of Labour Legislation, National Labour Institute, New Delhi)  
Banāras Law Journal (Law School, Banaras Hindu University, Varanasi)  
Bankers' Journal, Bombay  
Bengal Law Reports (1868-1875) except for 1868 other years 2 volumes per year  
H.C. & P.C. rulings  
Bengal Law Reports (Full Bench rulings) 1855  
Bhagirath (Business Manager, Publications Division, New Delhi)  
Bihar Bar Council Journal (1971- )  
Bihar Criminal Cases (1975- )  
Bihar Law Journal Reports (1953- ) citation by year  
Bihar Law Judgments (1978- )  
Bihar Law Times (1963- )  
Bihar Reports (1935-1947)  
Bombay Cases Reporter (1978- )  
Bombay H.C. Reports (1862-1875)  
Bombay High Court Criminal Ruling (1869-1907)  
Bombay High Court Printed Judgments (1868-1900)  
Bombay Law Reporter (Old City Civil Court Bldg., Fort, Bombay) (1899- )  
(Irregular)  
Bombay Rent Cases (1979- )  
Bombay Unreported Printed Judgments (1872-1900)  
Bourke's Reports (Calcutta) (1865-76)  
Burma Law Journal (1922-1927)  
Burma Law Reports (1948)  
Burma Law Times (1908-1920)  
C.B.I. Bulletin (R.K. Puram, New Delhi)  
Calcutta High Court Notes (1974- )  
Calcutta Law Journal (1905- ) 1905-1957—100 vols. Two vols. per year, later  
citation by year  
Calcutta Law Reports (1878-1883)  
Calcutta Weekly Notes (1897- )  
Central Provinces Law Reports (1888-1904)  
Chandigarh Criminal Cases (1978- )  
Chandigarh Law Reporter (1973- )

- Chandigarh Law Review  
Chartered Secretary (ICSI House, New Delhi)  
Civil and Military Law Journal (Rajouri Garden, New Delhi)  
Co-operative Law Journal (1964)  
Cochin University Law Review (Dept. of Law, Cochin Univ., Cochin)  
Company Cases (Company Law Institute of India (Pvt.) Ltd., Madras) (1931- )  
Company Law Journal (1963- )  
Company News and Notes (Dept. of Company Affairs, New Delhi)  
Company News Reporter (1976- )  
Comparative Law Review (Comparative Law Association, Law College, Pondicherry)  
Consumer Protection Journal  
Consumer Protection Reporter (1991- )  
Crimes (1983- )  
Criminal Law Journal (A.I.R. Ltd., Nagpur) (1904- ) citation by year after 1951  
Criminal Law Reporter (S.C. & Gujarat & Madhya Pradesh) (1973- )  
Criminal Law Reporter (S.C. & Rajasthan)(1973- )  
Criminal Law Reports (S.C. & Madhya Pradesh)(1973- )  
Current Central Legislation (Eastern Book Co., Lucknow) (1975- )  
Current Civil Cases (1985- )  
Current Civil Law Judgments (M.P.) (1983- )  
Current Criminal Law Judgments (M.P.)  
Current High Court Notes Reports, Calcutta.  
Current Indian Statutes (1923- )  
Current Labour Reports  
Current Law Journal (Civil & Criminal Punjab & Haryana) (1961- )  
Current Law Journal (Tax Laws) (1961- )  
Current Taxation Reports (1972- )  
Cuttack Law Reports (Criminal) (1972- )  
Cuttack Law Times (Law Times Press, Cuttack) (1939- )  
Cuttack Weekly Reporter (1970)  
Decisions of Sadar Dewani Adalat (1818-1862)  
Delhi Law Review (Faculty of Law, Uni. of Delhi, Delhi)  
Delhi Law Times (Delhi Law Times Office, Delhi) (1965- )  
Dominion Law Reporter (DLR) 1943-1953 all courts  
Drug Cases (1975- )  
Education Cases, Allahabad  
Election Law Reports (1951- )  
Essential Commodities Cases  
Excise and Food Adulteration Reports (1982- )  
Excise Law Times (1982- )  
Factories Journal Reports (1949- )

- Federal Court Reports (1939-1949)  
Federal Law Journal (1938-1949)  
Foreign Trade Review (Quarterly Journal of Indian Institute of Foreign Trade, New Delhi)  
Gandhi Marg (Journal of Gandhi Peace Foundation, New Delhi)  
Gujarat H.C. Reporter (1960-1977)  
Gujarat Law Herald, Ahmedabad (1981- )  
Gujarat Law Reporter (Gandhi Road, Ahmedabad) (1960- )  
Hindu Law Reporter, Chandigarh  
Hydes E. Reports (Bengal H.C.—1862-1863)  
Hydes Reports (1897)  
I.L.R. (Allahabad) (1875) 58 Vols. till 1936 citation by year 1937  
I.L.R. (Andhra) (1955) citation by year  
I.L.R. (Assam) (1949- )  
I.L.R. (Bombay) (1875-60 Vols. till 1936) citation by year 1937  
I.L.R. (Calcutta) (1875 till 1936, 63 Vols. till 1936) citation by year from 1937  
I.L.R. (Cuttack) (1949- ) citation by year  
I.L.R. (Hyderabad) (1951-1956)  
I.L.R. (Karachi) (1939-1946)  
I.L.R. (Kerala) (1957- )  
I.L.R. (Lahore) (1920-1947) from 1936, citation by year  
I.L.R. (Lucknow) (1926-1948)  
I.L.R. (Madhya Bharat) (1952-1956)  
I.L.R. (Madhya Pradesh) (1957- )  
I.L.R. (Madras) (1876) from 1937 citation by year  
I.L.R. (Mysore) (1951- ) followed by ILR Karnataka  
I.L.R. (Nagpur) (1936-1956)  
I.L.R. (Patiala) (1952-1955)  
I.L.R. (Patna) (1922)  
I.L.R. (Punjab or East Punjab) (1948-1957)  
I.L.R. (Rajasthan) (1951- )  
I.L.R. (Rangoon) (1923-1936)  
I.L.R. (Travancore-Cochin) (1951-1956)  
Income Tax and Tribunal Cases (1963- )  
Income Tax Cases vols. 1 to 10 (1886-1937)  
Income Tax Journal (1963- )  
Income Tax Reports (Company Law Institute of India (P) Ltd., Madras) (1933- )  
Income Tax Tribunal Decisions (1982- )  
Index to Indian Legal Periodicals (ICI)  
Indian Advocate (Bar Association of India, S.C. of India, New Delhi)  
Indian Appeals (L.R. 1872-1950)  
Indian Bar Review

- Indian Cases (1909-1947) Vols. 1-231  
Indian Decisions (Bom. H.C. & P.C., 1875-1878)  
Indian Decisions—New Series—(1862-1875)  
Indian Decisions—Old Series (O.S.) (1774-1858)  
Indian Economic and Social History Review (Delhi School of Economics, Uni. of Delhi, Delhi)  
Indian Factories Journal and Factories Journal Reports (Laws of India Pvt. Ltd., Madras) (FJR) (1960- )  
Indian Factories Journal Report (1949- )  
Indian H.C. Reports (Bom—1901-1906)  
Indian H.C. Reports (Cal—1901-1906)  
Indian Journal of Industrial Relations (Shri Ram Centre for Industrial Relations & Human Resources, New Delhi)  
Indian Journal of International Law (Indian Society of International Law, New Delhi)  
Indian Journal of Legal Studies (Faculty of Law, Univ. of Jodhpur, Jodhpur)  
Indian Journal of Public Administration (Indian Institute of Public Administration, New Delhi)  
Indian Journal of Social Works (Department of Publications, Tata Institute of Social Sciences, Bombay)  
Indian Jurist (1877-1893)  
Indian Jurist (O.S.—1866-1867)  
Indian Labour Journal (Labour Bureau, Simla)  
Indian Law Index, Monthly (1990- )  
Indian Police Journal (Indian Police Journal, New Delhi)  
Indian Quarterly (Indian Council of World Affairs, New Delhi)  
Indian Rulings (I.R.) (1929-1947)  
Indian Socio-Legal Journal (Indian Institute of Comparative Law, Bikaner)  
Islamic and Comparative Law Quarterly (Dept. of Islamic & Comparative Law, Indian Institute of Islamic Studies, New Delhi)  
Jabalpur Law Journal, Gwalior (1957- )  
Jaipur Law Journal (JLT Studies in Law, University of Rajasthan, Jaipur)  
Jammu and Kashmir Law Report (1948- )  
Johnston & Co. Reprint. Selection from reports on civil cases in Punjab record 1886-1900 (Lahore-1915)  
Journal of Islamic and Comparative Law (Delhi)  
Journal of Parliamentary Information (Lok Sabha Secretariat, Parliament House, New Delhi)  
Journal of Shipping Customs Law (1974- )  
Journal of the Bar Council of India (Bar Council of India, New Delhi)  
Journal of the Constitutional & Parliamentary Studies (Institute of Constitutional & Parliamentary Studies, New Delhi)  
Journal of the Indian Law Institute (ILI, New Delhi)

- Journal of the Indian Society of Criminology  
Journal of the Indian Society of International Law  
Judgments on Human Rights (Indian Social Institute, New Delhi)  
Karnataka Law Chronicle (1982- )  
Karnataka Law Journal (1923- )  
Karnataka Law Journal (Shankarapuram, Bangalore)  
Kashmir Law Journal (1962- )  
Kerala Law Journal (1957- )  
Kerala Law Reporter (1959- )  
Kerala Law Times (1949- )  
Knapp's Reports (P.C.) 1829-36 (1829-31, 1831-34, 1834-36)  
Kurukshetra Law Journal (Faculty of Law, Kurukshetra University, Kurukshetra)  
Labour and Industrial Cases (A.I.R. Ltd., Nagpur) (1968- )  
Labour Appeal Cases (1954)  
Labour Law Journal (1949)  
Lahore Law Journal (1919-1926)  
Lahore Law Times (1922- )  
Law Quarterly (ILI, West Bengal State Unit, Calcutta)  
Law Reporter (by J.G. Shome Judgments of Cal. H.C. & P.C.) 1878-1881  
Law Reporter Allahabad (1920-1936)  
Law Weekly (1914- )  
Law Weekly (Criminal) (1968- )  
Lawyer (Journal of the ILI, Madras State Unit, Madras)  
Lawyers Collective (Bombay)  
Lok Udyog (Bureau of Public Enterprises, Ministry of Finance, Govt. of India, New Delhi)  
Lower Burma Rulings (1900-1922) 1 vol. for 2 yrs.  
Lucknow Law Times (1960- ) (Eastern Book Co., Lucknow) Reports, Statute Law of U.P. & Central  
M.P. Law Times (1959- )  
Macnaghton W.H. Reports of Sadar Adalat (1831-1840)  
Madhya Bharat Law Reporter (1952-56)  
Madhya Pradesh Cases (1957)  
Madhya Pradesh Law Journal (1956- )  
Madhya Pradesh Law Times (Allahabad Law Publications, Allahabad)  
Madhya Pradesh Rent Control Journal (1978- )  
Madras Criminal Cases (1914-1950)  
Madras High Court Reports (1862-1875)  
Madras Law Journal (1891- )  
Madras Law Journal (Criminal) (1957- )  
Madras Law Times (1906-1924)  
Madras Law Weekly (1915- )

- Madras Weekly Notes (1910- )  
Maharashtra Law Journal (1963- )  
Maharashtra Law Reporter (1947- )  
Marshal W. Reports Civil Cases H.C. of Bengal 1862  
Matrimonial Law Reporter (1978- )  
Moore's Indian Appeals (1836-72)  
Morley's Digest (Cases of S.C. of Judi. India & P.C.) (1849-60)  
Municipal Corporation Cases (1973- )  
Mysore Chief Court Reports (1896-1930)  
Mysore High Court Reports (1931-1950)  
Mysore Law Journal (1923-1970)  
Mysore Law Reports (1878-1895)  
Nagpur Law Journal (1918-1960)  
Nagpur Law Report (1905-1935)  
National Law Review (LIPS, New Delhi)  
North West Provinces H.C. Reports (1869-75)  
O'Kinealy & G.S. Henderson Cal. H.C. Report Cases and P.C. Judgments  
Orissa Judicial Decisions (1959-70)  
Oudh Cases (1898-1926)  
Oudh Law Journal (1914-1926)  
Oudh Law Reports (1934-1946)  
Oudh Weekly Notes (1924-1946)  
P.C. Judgments (not reported in ILR (1876-1897) By B.R. Dave  
P.C. Judgments (P.B.) 1930-33 by S. Iyer and A. Swaminath Iyer  
P.C. Judgments on appeals from India (Saraswati & Banerjee) (1826-1886)  
Patna H.C. Cases (1917-1926)  
Patna Law Journal (1916-1921)  
Patna Law Journal Report (New) (1957- )  
Patna Law Report (1923-1925)  
Patna Law Report (New) (1957-1977)  
Patna Law Times (1920-1949)  
Patna Law Weekly (1916-1918)  
Patna Weekly Notes (1936-1977)  
Pepsu Law Reports (1949-1951)  
Prevention of Food Adulteration Cases (1971- )  
Prevention of Food Adulteration Journal (1975- )  
Punjab Law Journal (1967- )  
Punjab Law Reporter (1900- )  
Punjab Law Reporter (Delhi Section) (1968- )  
Punjab Law Reporter (P.L.R., Chandigarh)  
Punjab Records (1866-1919)  
Punjab University Law Review (Dept. of Law, Punjab University, Chandigarh)

- Punjab Weekly Reporter (1905-1922)  
 Rajasthan Criminal Cases (1976- )  
 Rajasthan Law Weekly (1950- )  
 Rajdhani Law Reporter, New Delhi  
 Rangoon Law Reports (1937-1947)  
 Ratan Lal's Unreported Cases (1889-98)  
 Rent Control Journal (1981- )  
 Rent Control Reporter (1969- )  
 Reserve Bank of India Bulletin (R.B. of India, Bombay)  
 Revenue Decisions (1951- )  
 Sales Tax Cases (Commercial Laws of India Pvt. Ltd., Madras) (1938- )  
 Saurashtra Law Reporter (1948-1956)  
 Seminar (New Delhi)  
 Service Cases Today  
 Service Law Cases, Delhi  
 Service Law Reporter  
 Simla Law Cases (1977- )  
 Sind Law Reporter (1907-1938)  
 Social Action (Indian Social Institute, New Delhi)  
 Social Defence (National Institute of Social Defence, New Delhi)  
 Southern India Sales Tax Cases, Madras  
 Srinagar Law Journal (1979- )  
 Suddar Dewany Adalat Decisions 1792-1855  
 Supreme Court Appeals (1952-1970)  
 Supreme Court Cases (Eastern Book Co., Lucknow) (1969- )  
 Supreme Court Cases (Criminal) (Eastern Book Co., Lucknow) (1970- )  
 Supreme Court Cases (Labour & Services) (Eastern Book Co., Lucknow) (1973- )  
 Supreme Court Cases (Taxation) (Eastern Book Co., Lucknow) (1973-1990)  
 Supreme Court Criminal Rulings (Allahabad) (1970- )  
 Supreme Court Journal (1950- )  
 Supreme Court Reports (1950- )  
 Supreme Court Weekly Reporter  
 Sutherland's Full Bench Rulings sp. 40 (1862-1864)  
 Sutherland's Judgments of P.C. on Appeals from India (1838-1867)  
 Sutherland's Reports of Appellate Decisions of H.C. of Calcutta, Jan. to July 1864  
 Sutherland's Reports on Special number July 1862 to July 1964  
 Sutherland's Weekly Reporter (1864-1877) 1 Vol. for 1864, 1876 and 1877, 3E  
     Vols. for 1865, 2 Vols. for other yrs.  
 Tamilnadu Law Notes Journal (1975- )  
 Tamilnadu Law Notes Journal (Cri), Madras  
 Taxation (Jor Bagh, New Delhi) (1948- )  
 Taxation Law Reports (AIR Ltd., Nagpur) (1971- )

Taxman (1978- )

Travancore Cochin Law Report

Travancore Law Journal (1911-1947)

U.P. Criminal Cases (1974- )

U.P. Criminal Law Reporter (1968- )

U.P. Law Times (1937-1941 & 1947)

U.P. Law Tribune (1979- )

U.P. Local Bodies & Educational Cases (1981- )

U.P. Sales Tax Journal (1982- )

U.P. Tax Cases (1974- )

• Un-overruled Civil Cases of Punjab (1866-1880).

United Provinces Law Report (1919-1921)

Unreported Judgments (S.C.) (1969- )

Unreported Printed Judgments of Bom. H.C. (1869-1898)

Upper Burma Rulings (Civil & Cri) (1892-1922)

Weir's Criminal Rulings Vols. 1 & 2

Writ Law Reporter, Madras



## *Appendix D*

### *Index to Indian Reference Materials*

#### *(i) Legal Periodicals and Law Reports*

The previous Appendix gives the list of legal periodicals and law reports. The law reports include cases decided by the superior courts which have value as precedents. Many law reports have a journal section wherein academic writings like articles and case-comments appear. Then there are purely academic journals containing such articles, case-comments and book reviews. Such journals report only statute law. Some of the law reports also contain a section on statute law.

#### *(ii) Well-Known Digests*

- All India Rent Control and Eviction Cases (from earliest time to 1976) — Eastern Book Company, Lucknow)
- All India Rent Control Digest (1969-1990) Vinod Publications.
- Complete Digest of Supreme Court Cases (Since 1950, Vols. I—XVI each volume up to the date of publication, Eastern Book Co., Lucknow)
- Complete Supreme Court Criminal Digest (1950-1992, Eastern Book Co., Lucknow)
- Consumer Protection Digest (Vinod Publications)
- Digest of Income Tax Cases-3 Vols.—1933-1985 (Central Law Agency, Allahabad)
- Digest of Labour Cases (1960- )
- Fifteen Years Digests 1951-1965 (AIR Ltd., Nagpur)
- Fifty Years Digests 1901-1950 (Digest Publications, Madras/Nagpur)
- Income Tax Digest 1886 to 1978 (AIR Ltd., Nagpur)
- Index to Case law & Referencer on Criminal Law 1983-1993 (Vinod Publi., Delhi)
- Key to Supreme Court Judgments 1950-1992 (AIR Publication, Nagpur)
- P.J. Patel's Supreme Court Reference Citations 1950-1976, 1977, Legal Research Bureau, Jamnagar)
- Quinquennial Digests 1966-1970 (AIR Ltd., Nagpur)
- Quinquennial Digests 1971-1975 (AIR Ltd., Nagpur)
- Quinquennial Digests 1976-1980 (AIR Ltd., Nagpur)
- Quinquennial Digests 1981-1985 (AIR Ltd., Nag/Mad)
- Quinquennial Digests 1986-1990 (AIR Ltd., Nag/Mad)
- Sales Tax Digest (S.V. Aiyar, Commercial Laws of India Pvt. Ltd., Madras)
- Supreme Court Civil Referencer, 1950-1993
- Supreme Court on Constitutional Law (Eastern Book Co., Lucknow)
- Supreme Court Decennial Digest (1981-1990, in 5 Vols., Eastern Book Co., Lucknow)
- Supreme Court on Essential Commodities Act (Eastern Book Co., Lucknow)
- Supreme Court Labour & Services Digest (1950-1993 Vols. I-VI, Eastern Book Co., Lucknow)
- Supreme Court on Public Servants & Disciplinary Action (1950-1987) Vinod Publication.

Supreme Court on I Relating to Motor Vehicles (1950-1980, Eastern Book Co., Lucknow)

Supreme Court on Preventive Detention (1950-to date, Eastern Book Co., Lucknow)

Supreme Court Yearly Digest Series (1977 onwards, Eastern Book Co., Lucknow)

Yearly Digest (M.L.J. Ltd., Publications) (discontinued)

**(iii) Well-Known Legal Dictionaries**

A Concise Law Dictionary (5th Edn., 1954)—P.G. Osborne

Abraham & Hawtrey's Parliamentary Dictionary

A Dictionary of Legal Terms—N.M. Dani.

A Dictionary of Legal Terms—(1st Edn., 1975) Vinod K. Agarwal

A Selection of Legal Maxims by Herbert Broom

American Jurisprudence (70 Vols.) and Corpus Juris Secundum (72 Vols.) (West Publishing Co.)

Black's Law Dictionary

Biswas Encyclopedic 1979 Law Dictionary

Dictionary of American Penology (1st Edn., 1979)—Williams

Dictionary of Legal Police Terms & Phrases (English-Hindi)—R.C. Puri

Dictionary of English Law by Charles Sweet (1882)

Dictionary of English Law by W.G. Byrne (1923)

Dictionary of English Law by Jowitt (1959)

Dictionary of Taxation (1st Edn., 1981)—Garry Hart

Dictionary of Statutory Terms...(1972)—B.R. Beotra

Direct Taxes Law Lexicon (1st Edn., 1982)—G.S. Agarwal

Glossary of Judicial & Revenue Terms (2nd Edn., 1968)—H.R. Willon

Glossary of Legal Words, Terms, Phrases, Maxims & Doctrines (2nd Edn., English-Gujarati)—A.N. Karia

Glossary of Term and Expressions Sales Tax, (1977) — S.D. Singh

Income Tax Dictionary (1st Edn., 1982)—R.N. Lakhotia

Judicial Dictionary (8th Edn., 1980)—K.J. Aiyar

Law Dictionary (English & Hindi), 3rd Edn.—Kamlesh Chopra

Legal Dictionary (1st Edn., 1981)—Sinha & Narula

Law Dictionary (1st Edn., 1982, Eng.-Guj.)—A.N. Karia, 2nd Edn., 1976

Legal Glossary (4th Edn., 1988, Govt. of India, Ministry of Law & Justice, English-Hindi, Hindi-English, Latin-Hindi, with a List of Central Enactments)

Legal Thesaurus (1980)—William G. Borton

Maxims of the Law (1636) by Francis Bacon

Mitra's Legal & Commercial Dictionary (2nd Edn., 1976)—A.R. Biswas

Mozley & Whiteley's Law Dictionary Part I-(1970)—John B. Saunders

Mozley & Whiteley's Law Dictionary Part II-(1970)—A.C. Sen

Oxford Companion to Law (1980)—David M. Walker

Stroud's Judicial Dictionary(1890, 3rd Edn., 1952)

Supreme Court on Words & Phrases (1993 R/P 1995)—Surendra Malik (Eastern Book Co., Lucknow)

Terminology in Land Reforms (1st Edn., 1982)—P.T. George

Trilingual Administrative Dictionary (1st Edn., 1988)—Government of Gujarat

Venkata Ramaiya's Law Lexicon (Vol. I and II)—M.C. Desai

Wharton's Law Lexicon (1848 and many later editions)

Whitherly's Dictionary of Insurance (1980)—Hugh Cockerell

Words and Phrases Judicially Defined by Roland Burrow

Words and Phrases Legally Defined (Roland's edition revised) by Saunders

## Appendix E

# Legal Research and Methodology in the Indian Legal System

"I do not see how anyone can possibly understand the law or know anything of it, except memoriter, without getting a clear idea of how it is in fact generated in society and adapted from age to age to its immediate needs and uses."

—Woodrow Wilson, 1894.

"There is no short-cut to truth; no way to gain a knowledge of the universe except through the gateway of scientific method."

—Karl Pearson

### SYNOPSIS

1. What is Research
2. Why Research
3. Legal Scholarship
4. Importance of Research
5. Types of Research
6. Research Techniques
7. Rewards of Research
8. Rules for training a Researcher
9. Legal Methodology

#### What is Research

Legal research is systematic investigation of problems of and connected with law. Research is that category of investigation which attempts to collect data from various sources and in a variety of ways, and which exposes the data to a severe and intensive scrutiny. As suggested by the 1911 Encyclopaedia Britannica it is "The act of searching into a matter closely and carefully, inquiry directed to the *discovery of truth* and in particular the *trained scientific investigation* of the principles and facts of any subject, based on original and *first hand study of authorities* or experiment. Investigations of every kind which have been based on original sources of knowledge may be styled research and it may be said that without "research" no authoritative works have been written, no scientific discoveries or inventions made, no theories of any value propounded....<sup>1</sup>"

#### Why Research

Research may be pursued to obtain better knowledge and understanding of any problem of legal philosophy, legal history, comparative study of law or any system of positive law, international or municipal. It is an essential to text writing and teaching, to ascertain the correct formulation of the qualifications and limitations on, the principles or rules of any topic e.g. the rules of vicarious liability in tort, and in modern times it is extensively pursued as a preliminary to law reform. Such research frequently involves an essentially sociological investigation into the actual operation of particular institutions, e.g. courts or juries or particular bodies or principles of law, e.g. laws controlling the sale of liquor and is necessarily interdisciplinary.<sup>2</sup>

Research is frequently necessary in preparation of advice, opinions, of arguments for submissions to court, and by judges in preparing their judgments.<sup>3</sup> In words of

1. I.L.I.: *Legal Research & Methodology*, 1983, 2.

2. D.M. Walker: *The Oxford Companion to Law*, 1980, 749-750.

3. D.M. Walker: *The Oxford Companion to Law*, 1980, 749-750.

Wortley "If our numerous laws were perfect, if social control were autonomic, legal scholarship, like the State of the Marxists, could be left to wither away. But our laws are not perfect and final and cannot be so in a dynamic society; they are not always intelligible, and if intelligible, not always intelligibly made."<sup>4</sup> This should provide us with the answer as to why research is necessary. One may therefore say that the object of legal research is to establish propositions concerning the law. For this one may dig up facts, unearth new data and discover relationship between facts already known.<sup>5</sup>

Any one engaged in research pertaining to law is a legal researcher; he may be a sociologist, historian, political scientist, or even a layman. But as an occupational exercise, legal research is needed for legislators, judges, lawyers and legal academics i.e. teachers, students and jurists.<sup>6</sup>

### Legal Scholarship

Legal Scholarship is systematic research into and thinking and writing about any division or sub-division of legal science. It is mainly the function of the legal scholar or jurist, frequently in a university, but valuable contributions to Legal Scholarship have been made by philosophers, historians and scholars in other disciplines and by judges, practising lawyers and law editors. This activity is sometimes called "legal science" though that phrase seems more appropriate for the total body of knowledge, understanding of which is advanced by legal scholarship. Legal Scholarship is thus a powerful civilising factor and its work is a pre-requisite of peaceable and orderly living in society.<sup>7</sup>

Methods of Legal Scholarship vary widely according to the branch of legal science under consideration or the structure of the legal system being considered and its sources and forms.

The methods of Legal Scholarship are at least six in number: (1) philosophical, (2) historical, (3) analytical, (4) sociological, (5) expository, and (6) critical.<sup>8</sup>

The *philosophical method* studies the philosophical basis of the institutions and doctrines. The *historical method* investigates the origins and development of institutions, principles and rules, and tries to discover the reasons for, line and direction of evolution. The *analytical method* examines structure, subject-matter and doctrines on linguistic and logical basis, seeking to ascertain the most general principles of a legal system. The *sociological method* is also called a functional method, it examines a legal system as a mode of social control, and with regard to the end it seeks to achieve and how it effects its aims. The *expository or dogmatic method* seeks to state the principles and rules actually in force in systematic order, to arrive at generalizations and to determine consistency of rules and decisions one with another. Lastly, the *critical method* subjects the principles and rules actually in force to criticism from many points of view.<sup>9</sup>

4. *Supra* n. 1, 1.

5. *Ibid.*, 300.

6. *Ibid.*, 301.

7. *Supra* n. 2, 750.

8. *Ibid.*, 753.

9. *Ibid.*

(For a lively discussion on Analytical, Historical, Comparative, Statistical and Critical research needed for law reform see P.M. Bakshi's article —*Legal Research and Law Reform* in I.L.I.'s *Legal Research and Methodology*, 1983, 217-240, Tripathi Publications.)

### Importance of Research

It is a misunderstanding to believe that legal research is for an academician or a theoretician and not for a lawyer. This line of thinking undermines the importance of research. Law embraces the whole society and it touches every human activity. Besides statutes, rules, orders, judicial decision constantly pour in at a great speed. Law does not operate in vacuum. It reflects social attitudes and behaviour and it moulds and controls them to ensure that they flow into proper channels.

Research comprises fact finding, fact ordering, fact systematising and studying and predicting legal trends. Sometimes law is expressed in ambiguous language and leaves gaps to be filled in, during the process of its application, from case to case and therefore it is not easily understood.<sup>10</sup> This then, is the proper area for a lawyer or a student to do research to find out how the law should be interpreted. Herein lies the importance of research. The Western countries have given tremendous importance to legal research. In India the University Grants Commission (UGC), Indian Council of Social Science Research (ICSSR), universities and its various departments and research institutes established by Council of Scientific and Industrial Research, and government departments and industries and some foundations promote research ventures.

The study of law therefore cannot be segregated or isolated from legal research, in other words legal research is indispensable for any student of law.

### Types of Research

According to Dr. S.N. Jain, research is either doctrinal or non-doctrinal.

Doctrinal research is a research into legal doctrines through analysis of statutory provisions and cases by the application of the power of reasoning.

Non-doctrinal research on the other hand is a research into relationship of law with other behavioural sciences. The emphasis here is not on legal doctrines and concepts but on people, social values and social institutions. These categories are not mutually exclusive. A person concentrating on the former may occasionally support the legal doctrines by the help of the economic and social data.<sup>11</sup>

A scholar of law may adopt any of the following courses in doing research:

- (a) Write a *historical essay* showing the development in a field of law or a particular doctrine.
- (b) Write a kind of *survey on the recent developments in law* summarising the most important cases, analysing how they have followed, or deviated from, the past cases, and make a guess as to what the courts would do in future. *Annual Survey of Indian Law*<sup>12</sup> falls in this category of research.

10. *Supra* n. 1, 431-432.

11. Dr. S.N. Jain: *Legal Research & Methodology*, 14 JILI 487, 491(1972) quoted in I.L.I.'s *Legal Research & Methodology*, 1983, 433.

12. Published by Indian Law Institute, New Delhi.

(c) *Analyse doctrines* to see whether the case law is consistent, ambiguous and to state what in his opinion are the correct propositions of the law by applying his own rationale or reasons or a *priori* method. This does not rule out application of the policy approach but this policy approach is evolved by doing arm-chair research (by a *priori*).

(d) Write about *relationship between law and other behavioural sciences*.<sup>13</sup>

### Research Techniques<sup>14</sup>

#### A. Observations on the reading of case law

1. Slower reading.
2. Comparing different reports of a case.
3. Reading case law in its historical context.

#### B. Analysis of Statutory law

1. The Historical Approach.
2. Discovering the political background.

#### C. The Comparative Approach.

### Rewards of Research

Apart from monetary gain the rewards of research are spiritual and intellectual. It creates awareness of judicial creativity, associated with growth in the law. In words of John H. Wigmore<sup>15</sup>: "To any student it is an important intellectual stage when he first realises that all law is in a state of constant motion, like a Kaleidoscope. I do not remember just when this realization came to me; I know it was not while in the Law School; but as I look back, I note a great difference in all my notions about law since the time of that realization."

*Like a good lecture, a good research paper is satisfying, enlivening, absorbing. It can make the law sing.*<sup>16</sup>

### Rules for training a Researcher

Prof. B.A. Wortley propounds the following empirical rules for training a researcher:<sup>17</sup>

- (i) What is wanted should be sound, publishable research and not unattainable perfection. This is because "Learning undigested by quiet thought may be labour lost; thought unassisted by learning may be perilous".
- (ii) Research involves *honest* and *dispassionate* investigation. This is an ethical rule.
- (iii) No research candidate should be accepted by a faculty unless it has someone able and willing to supervise him and has adequate research materials.

13. *Supra* n. 10.

14. For details see *Supra* n. 1, 40-52: "Ellinger & Keith: *Legal Research Techniques & Ideas*".

15. XXX Harv. L. Rev. 812, 823 (1917) quoted by P.M. Bakshi: *Legal Research & Law Reform, Supra* n. 1, 217-241, 241.

16. *Ibid.*

17. B.A. Wortley: VIII Journal of the Society of Public Teachers of Law (New Series) 249-260 (1964-1965): *Supra* n. 1, 5-10.

- (iv) Legal research should not, of course, be confined to books, articles, treatise, statutes and cases, but if necessary experts should be sought out in the realm of law and related fields of finance and commerce and government for their experience.
- (v) It is best to let the candidate, after he has expressed a general interest in a particular field and acquainted himself with it, suggest the topic.
- (vi) A man must at all times have a plan, around which he can arrange his material. Much depends on inspiration and enthusiasm.
- (vii) A supervisor who in any event should only undertake research in which he has a real interest, should never succumb to pressure to take on more students than he can properly and effectively manage.
- (viii) Whilst responsible academic work must be done individually, there are immense advantages in doing it in close touch with a group of scholars in allied topics. Boredom and procrastination are the greatest dangers run by the solitary worker; he should say to himself, therefore, "work now, play later". He must be stimulated.
- (ix) All relevant material should be noted as read and with full and accurate references. This helps in avoiding duplication.
- (x) Writing should not be deferred until everything has been read but too protracted reading will often result in nothing being attempted. All beginnings are difficult—(Alle beginpelen zijn moeielijk). Conclusions are often harder still. Here the supervisor must act, as he must whenever any snag arises. He must encourage, exhort and persuade.
- (xi) Better miss an article, however learned, than an original source—case, statute or treaty, because short cuts are dangerous. Check primary sources before citing secondary sources as authorities.
- (xii) The last rule is the Rule of capture. That is, "not until a case or a document has been read and studied in the original, does it become one's own for the purpose of citation." Again respect the copyright.

### Legal Methodology<sup>18</sup>

Legal Methodology is the body of knowledge of the methods which may be utilised to discover the principles and rules relevant, within a particular legal system or body of law, to the determination of a particular problem or controversy.

Application of legal methodology depends in the first place, on determination of the facts raising the problem and discovery of what is truly in issue. The facts may be agreed or admitted, but if not admitted, must be resolved by receiving and interpreting and evaluating evidence of the relevant facts.

Once the facts have been determined they must be classified or categorised to discover what legal issues or points have to be investigated. This must be done by reference to the analytical classification of the particular legal system, to the major divisions or branches of that system, the main heads thereof, sub-heads, sub-sub-heads, and so on, under which the principles and rules are grouped in the encyclo-

18. *Supra* n. 2, 837-838.



paedias, standard text-books, indices, digests and other reference works of the particular system.

Thus a set of facts may be analysed as raising an issue of private law—obligations—contract—sale of goods—seller's liability for defective goods. Such analysis and reference to the appropriate books, and other sources of information, leads to the sections or statutes, interpretative case-law, academic commentary, and other sources (q.v.) of principles and rules relevant to factual issues of the particular kind being investigated. It is essential that the classification or categorization of the facts be done by reference to legal heads and concepts, and not to the everyday or commonsense heads to which a layman might refer to a problem. Thus the sale of a defective car is properly analysed and classified as sale of goods—liability for defective goods, and not under such heads as Automobile, Road Traffic or Transport.

The application of legal methodology in this way is a skill much developed by experience and extensive acquaintance with the legal system in question, so that an experienced lawyer can frequently omit several stages in the process of scientific enquiry and go at once to the statute or case which provides an answer to his problem or even answer it without needing to look at the legal sources and all.

Complications arise from the facts that a given set of facts may involve a number of distinct legal issues, such as the jurisdiction of the court, of the system of law to be applied, of the principles of law involved, of the significance of the facts for the principle (e.g. whether, where goods were really "defective" or, in fact, adequate) and of the remedy competent and appropriate, and factors affecting it. Only extensive legal knowledge and experience can suggest to a lawyer all the points which require investigation before he can advise what law is applicable to a given set of facts and what the rights and duties of the parties are in the circumstances.<sup>19</sup>

Methodology thus refers to the methods, techniques or tools employed for the collection and processing of data.<sup>20</sup> The researcher must in a way play Columbus and sail across the sea of learning with great expectations of stumbling on the enchanted shores of some new world. Methods and mechanics<sup>21</sup> in that will then become incidental and nothing more. It is actually a voyage of discovery leading to further research. And thus it continues to thrive unbound.<sup>22</sup>

19. *Supra* n. 2, 837-838.

20. See Narmada Khodje: *Course on Research Methodology in Law*: I.L.I.: Legal Research & Methodology, 1983, 431-436.

21. For bibliography see R.N. Sharma & S. Bakshi & O.K. Chaudhary "Research Methodology and Legal Research, A Select Bibliography" in I.L.I.: Legal Research & Methodology, 1983, 701-718.

22. *Supra* n. 19.

*Appendix F*

*Instrument of Accession of Jammu  
and Kashmir to India<sup>1</sup>*

WHEREAS, the Indian Independence Act, 1947, provides that as from the fifteenth day of August 1947, there shall be set up an Independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India.

And WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

Now therefore I . . . . . Ruler of . . . . . in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and:

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of . . . . . (hereinafter referred to as "this State") such functions as may be vested in them by or order the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act, or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Domination for the purposes of Dominion law which applies in the State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to

1. THE LAWYERS, Vol. 5, No. 4, April 1990, 12 & 23.

them on such terms as may be agreed, or, in default, of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to . . . . . commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

GIVEN UNDER MY HAND THIS . . . . . day of August, Nineteen hundred and forty seven.

I do hereby accept this Instrument of Accession. Dated this . . . . . day of August, Nineteen hundred and forty seven.

GOVERNOR-GENERAL OF INDIA

[Text of the Letter Addressed to Lord Mountbatten, the Governor-General of India by the then Maharaja of Jammu and Kashmir State.]<sup>2</sup>

26th Oct., 1947

My Dear Lord Mountbatten,

I have to inform Your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As Your Excellency is aware the State of Jammu and Kashmir has not acceded to either the Dominion of India or to Pakistan. Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republics and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, whether it is not in the best interest of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into a standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government under the standstill agreement are operating Post and Telegraph system inside the State.

2. The Lawyers, Vol. 5, No. 4, April 1990, 12 & 23.

Though we have got a standstill agreement with the Pakistan Government, that Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes and desperadoes, with modern weapons, have been allowed to infiltrate into the State at first in Poonch area, then in Sialkot and finally in mass in the area adjoining Hazara district on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously that it has become difficult to stop the wanton destruction of life and property and looting. The Mahoorah Power House which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my Government, as a first step to overrunning the whole State.

The mass infiltration of tribesmen drawn from distant areas of the N.W.F. Province coming regularly in motor trucks using Mansehr-Muzaffarabad road and fully armed with up-to-date weapons cannot possibly be done without the knowledge of the Provincial Government of the N.W.F. Province and the Government of Pakistan. In spite of repeated appeals made by my Government no attempt has been made to check these raiders or stop them from coming to my State. In fact both the Pakistan Radio and press have reported these occurrences. The Pakistan Radio even put out a story that a provisional Government has been set up in Kashmir. The people of my State both the Muslims and non-Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to free-booters. On this basis no civilized Government can exist or be maintained. This alternative I will never allow to happen so long as I am the Ruler of the State and I have life to defend my country.

I may also inform Your Excellency's Government that it is my intention at once to set up an Interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved, immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you if further explanation is needed.

In haste and with kindest regards.

Sd.

HARI SINGH

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