THE NATURE OF RESEARCH AND TYPES OF METHODOLOGY IN LEGAL RESEARCH.

BY

ALFRED ABHULIMHEN-IYOHA ESQ

EDO STATE JUDICIARY, BENIN CITY, NIGERIA

+2348055968440

2020

INTRODUCTION

Research can be defined as a scientific and systematic enquiry, aimed at the discovery of new knowledge. Research therefore involves gathering information for a purpose, and it is the purpose that usually determines the type of research undertaken and how it is conducted.

Legal research involves the collection of legal materials for the purpose of discovering new facts that would contribute to the body of knowledge in a legal field or subject. A precondition for legal research in any form has become that the researcher should not only have knowledge about the traditional elements of the law, but also about the quickly changing societal, political, economic and technological contexts and, possibly, other aspects of relevance.[1]

The purpose of this discourse is to examine the nature of legal research, as well as outline the types of research methodologies vis-a-viz the underlined concepts in relation to legal research.

NATURE OF RESEARCH

Research in common parlance refers to a search for new knowledge. The Advanced Learner's Dictionary of Current English lays down the meaning of research as "a careful investigation or inquiry especially through search for new facts in any branch of knowledge."[2] Redman and Mory define research as a "systematized effort to gain new knowledge."[3]

The term Methodology is a scientific discipline which pertains to defining and systematizing methods, that is, appropriate ways of discerning the subject of investigation. This describes how the research is going to be conducted, either through interviews, through the use of study materials, which may be primary or secondary sources, internet searches, or field research.

Accordingly, legal methodology is a scientific discipline dealing with methods of discerning law and legal phenomena.

[1] Langbroek, Philip M., Methodology of Legal Research: Challenges and Opportunities. (Utrecht Law Review, Vol. 13, No. 3, p. 1–8, 2017).
[2] The Advanced Learner's Dictionary of Current English, (Oxford, 1952), p. 1069.
[3] L.V. Redman and A.V.H. Mory, The Romance of Research, 1923, p.10.

Legal research is defined by legal studies since it is the materials that are used in legal studies and the topics that are taught and learnt that determine legal research. In a similar light, legal studies are also defined by legal research as the discoveries of legal research shape legal studies.[4] Legal research, needs to be carried out for the following reasons[5]:

a) To ascertain laws on a given topic or subject.
b) To identify 'gaps' and 'ambiguities' in law.
c) To critically examine consistency, coherence and stability of law and legal propositions.
d) To undertake 'social auditing of law' [i.e. auditing pre-Legislative 'forces' and post-Legislative 'impacts' of law].
e) To suggest reforms/developments in law by undertakings research intended:

i. To investigate 'gap' between the 'legal ideals' and 'actual practice'.
ii. To understand 'effectiveness' or 'impact' of law in a given social set-up at a given time.
iii. To find out as to whether law is serving the needs of the society and has a social value.
iv. To make suggestions for improvements in the law on concrete formulations and proposals.

Types of Research

1. Doctrinal Legal Research[6];

   It is a research into legal rules, principles, concepts or doctrines. It involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship. It arranges the existing law in order and provides thematic parameters for such an order. It also concerns with critical review of legislations and of decisional processes and their underlying policy.

   Doctrinal legal research, involves: (i) systematic analysis of statutory provisions and of legal principles involved therein, or derived therefrom, and (ii) logical and rational ordering of the legal propositions and principles. It may be historical or comparative. Historical legal research, deals with the past. It throws light on the past to understand the present. It explores the circumstances that led to the adoption of the existing law. It gives

[4] Frances K. Stage & Karen Manning, Research in the College Context: Approaches and Methods (Brunner-Routledge, New York 2008).
[5] Legal Research and Methodology (Indian Law Institute, New Delhi, 2nd edn, 2001) page 111.
[6] S. K Verma and M. Afzal Wani, Legal Research and Methodology (2nd edn, 2001, Indian Law Institute, New Delhi) page 68.

a clue to the reasons why a particular provision of law or law was framed in the form in which now it appears. It also often reveals that a particular existing provision/law, fully justifiable at the time when it was introduced, is no longer justifiable because the reasons/circumstances that justified the original inclusion of that provision/law are no longer valid.

While comparative legal research, as evident from its title, involves comparative study of comparable laws or legal institutions from different jurisdictions. It exhibits the lessons that can be learnt from each other's failures and achievements.

2. Collative Legal Research;

   This type of legal research is where the researcher collects all the relevant materials, with or without its summary, on a given topic and arranges/classifies them in a logical manner. When a legal researcher prepares a digest of laws, statutory provisions, judicial pronouncements or annotated bibliography[7] on a particular topic or subject, that research gets the label of collative legal research.

   It would be a mistake to undermine this type of legal research as inferior to other types of legal research. Properly collated legal material, which is reliable, reasonably extensive and classified logically, is as much contribution to legal writing as any other material. A well-collated material will serve a useful purpose by reducing the labor of researchers. It offers reliable versions of the law. Collative material has its own value and collative research is an end in itself.

3. Historical Legal Research[8];

   This legal research intends to trace historical antecedents of a legal fact. Tracing history of a particular legal fact becomes significant for the following attributes.

   i. It becomes useful when the present statute or statutory provision has raised meaningful queries and it becomes necessary to explore the circumstances in which the present position came out. It helps to remove certain doubts about the legal fact.

[7] For example see, R M W Dias, Bibliography of Jurisprudence (Butterworths, London, 2nd edn, 1964).

[8] P. M Bakshi, Legal Research and Law Reform. (Journal of the Indian Law Institute, 1982). Vol. 24, pp. 391-415, and S K Verma & M Afzal Wani (eds), Legal Research and Methodology, supra, page 111.

ii. It supplies the researcher the reasons that justify the present position. It would also exhibit that a particular existing provision, fully justifiable at the time when it was introduced, is no longer so justifiable because the reasons and the circumstances that justified its inclusion are no longer valid or exist.

iii. It discloses the alternatives, different than the currently adopted ones, which were considered and rejected by the lawmakers and reasons thereof. In this way, it initiates or contributes in legal reforms.

iv. The history of a legal fact, when traced deeply and arranged logically, shows the gradual evolution of the law or legal fact on certain lines, and thereby of general trend of its change. It shows the way the legal fact is evolved.98

v. The historical background of law enables law-makers to know the principles used or followed by Legislature from home or abroad in earlier identical law(s). In majority of the cases, Legislature consults and adapts earlier statutes or makes use of principles laid down or proposed in decided cases.

vi. The historical background of law or a statutory provision helps judiciary in interpreting law in a more rational and pragmatic way. As the historical research helps it to know the historical and political spirit in which that particular law, or a legal provision, came into existence and for what reasons.

4. Comparative Legal Research[9];

This is a branch of legal research in which the normative ambitions of legal research have been transparent over most of its life. Comparative legal research demonstrates that the goals of law can be achieved by different rules and institutions in different social contexts.

There are two schools of thought about comparative legal research. The first school perceives comparative legal research as a mere process, a method of approaching legal problems. While the second school treats it as a dogmatic science, as it aims to study and collate the law of different countries in a systematic order, with the object of placing

[9] K. Zweigert and H. Kötz, An Introduction to Comparative Law, 3rd edn (translated by Tony Weir, Oxford, Oxford University Press, 1998) pages 15–18, 58–62.

stress upon the resemblances and differences in the rules adopted by various countries, to solve the many problems coming out of the organized society.

The former school has four shades of views. A comparative legal research, according to it, is undertaken (i) to initiate acquaintance with a foreign law, (ii) to animate and modernize the study of private law of a country, (iii) to prepare an internal law by knowing the way in which the legislature from other jurisdictions has carried out reforms, and (iv) to study law 'common to all'.

In spite of the two different schools of thought, it is, however, undeniable that comparative legal research serves as a good means for introducing new ideas into a legal system.

5. Empirical Legal Research;

   This assesses impact of law and reveals the gap between legal idealism and social reality. Perceiving the idea of law as a social phenomenon, a researcher explores social, political, economic and cultural dimensions or implications of law.

6. Evaluative Legal Research;

   This aims at expounding the logical coherence of concepts, elements, facts and interests of legal phenomenon individually, of their relationship inter se and their relationship with the concepts, elements, facts and interests outside the legal system for determining and defining the terms and presuppositions used in law. The research is to ascertain the nature, scope and source of law in order to explain what law is, and also to spell out several propositions used in law.

7. Reform-oriented Legal Research;

   It is based on empirical study and critical examination of law, recommends changes in law and legal institutions.[10]

[10] Arthurs, Harry W., "Law and Learning in an Era of Globalization" (2009).

CONCLUSION

Research is based majorly on the purpose of research, and the main aim of research is to discover new knowledge. Methodology is also an important factor in determining the type of research which the researcher intends to employ, as well as the result, aim and significance of the research. This discourse has outlined the various types of legal research and several ways in which it can be accomplished competently.