THE EVOLUTION OF RESEARCH STUDIES IN LAW: A SHIFT FROM DOCTRINAL TO INTERDISCIPLINARY[+]

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Abstract

The ever-changing landscape of society, education and research has not failed to leave its mark in the study of, and research in, law. This concept paper traces the evolution of legal research from traditional methodology to research paradigms that reflect the changing needs of the law and society. It extracts the traditional methodology for legal research and highlights the new move towards interdisciplinary while focusing on the reasons for said move. The paper establishes that though traditional methodology in research continue to be fundamental to legal research, the incorporation of interdisciplinary paradigms is necessary for the proper development and evolution of the law in general and legal research in particular

Keywords: legal research, interdisciplinary research, research methodology, research methods.

1. Introduction

In the conduct of any research work, not only are the methods used important but the rationale or justification for the choice of any research method determine the successor otherwise of the undertaking. The effectiveness of Law is grounded in its dynamism and its ability to keep changing as the society develops and grows. This feature is also important to law as a field and subject of research study. Research by different scholars over the years have established that law cannot operate independent of other fields of studies as the growth and development in the society and in all human endeavors has made it possible for law as a field to intermingle with other disciplines.

This paper examines the concept and purpose of inter disciplinary research while conducting an analysis of the evolution of and current trends in legal research. The paper is divided into sections. After this introduction the next section presents the different methodological approaches in research and the third the concept and reasons for undertaking legal research. The fourth sections discussed the nature of doctrinal legal research while the fifth looks at the nature of interdisciplinary research and how it has evolved to be applied to legal research. The next segment analyses current trends in legal research in Nigeria while the last section presents a summary, observations and recommendations.

2. Definition and Approaches in Research Methodology

According to Vibhute and Aynalem[1] Research is the careful investigation of a phenomenon towards increasing the sum of human knowledge and is a process of identifying and

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investigating a fact or a problem with a view to acquiring an insight into it or finding an apt solution therefore. Thus, research implies the quest for the investigation or identification of a fact or a problem with the intention of getting effective solutions to a problem that is hitherto not known to the public.

Legal research has been defined as the systematic study towards increasing the sum of knowledge in law[2] . It is the method of identifying and collating data or information to aid in legal decision making and serves the purpose of providing a better understanding of a law or set of laws by breaking and analysing its components parts. It is also defined as an objective and systematic inquiry or investigation into the basic facts, sources, ideas or concepts, principles and institutions of law[3] Sanjeyvignesh[4] further opines that legal research is undertaken to 'obtain better knowledge and understanding of any problem of Legal Philosophy, Legal History, Comparative study of Law, or any system of positive law'. It has also been described as the type of research that organises or arranges laws into a complex set of terms and concepts and studies how rules and laws interact with each other.

In the conduct of legal research, different philosophical approaches or paradigms may be employed by the researcher. The choices are usually determined by the nature of the questions raised and the intended objectives of the research and range from doctrinal to comparative and empirical[5]

2.1 Doctrinal Legal Research

The term doctrinal research may impute two different meanings. The first refers to the summation of the research methodology employed by a researcher towards solving or arriving at the answers to research question while the second implies the methods used to collect data and information while conducting research.

When referring to the former in relation to research in law doctrinal research means research that focuses on matters relating to the discipline of law alone[6]. Thus it may be a rigorous and systematic investigation into the legal Rules, principles, concepts or doctrines in order to ascertain or extract legal doctrines and their inter-relationships with each other. It may also involve a study with aim of re-arranging existing laws to establish their powers and limitations or a review of a legislative process and overall results[7]. In any case research from this perspective may trace the evolution of a law or set of laws, conduct comparative studies of laws in different legislations or study case law in a bid to extract or understand legal principles. Doctrinal research

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1 K. Vibhute and F. Aynalem, *Legal Research Methods: Teaching Material*. (Justice and Legal Research Institute. 2009)10

2 Ibid. 22

3 A Kabir, *A Manual for law Dissertations*. (Clear Impressions Ltd. Kano2008) p.1-2; P Chynoweth, *Advanced Research Methods in the Built Environment.* (Stanford University Press2008) 25

4 J Sanjeyvignesh, Types of legal research needed for law reform(2014) 4

5 A Kabir (2008) ibid

6 I. J. Kroezt, Legal Research Methodology and the Dream of Inter Disciplinary. *Per/PELJ* (16) 3(2014) .1

7 Ibid p. 2

in this sense does not go beyond the discipline of the law[8]. Here, therefore, doctrinal legal research will also mean intra-disciplinary research. In fact, according to Haruna[9] this method focuses heavily, if not exclusively, upon the law itself as an internal self-sustaining set of principles which can be accessed and analyzed through reading court judgments and statutes with little or no reference to the world outside the law

Vibhute and Anyalem[10] postulate that this type of doctrinal research serves a number of purposes and poses multiple advantages. First, its logical ordering and systemization of legal rules provides other researchers quick access to information to aid in problem solving. Secondly, it tests the logical coherence and efficacy of laws and thirdly gives us a better understanding of the complexities of a law. It also helps to highlight loopholes, gaps or ambiguities in the provisions of a law through either comparative or in-depth analyses and can not only result in the development of legal theories but may be able to predict future trends in law and legislation.

As relates to the latter however, doctrinal research becomes a small segment or step in the overall research process. In this sense, doctrinal research is defined as library-oriented research [11] as it places emphasis on the reference to substantive laws, rules, judicial pronouncements, parliamentary debates, and other conventional legal materials to provide answers to research questions. Kabiru[12] refers to this type of method as research into the black letter of the law as it depends heavily on what the law is as contained in books, Journals, case laws, statutes and other related sources of data.

2.2 Interdisciplinary Research and the Evolution of Legal Research

The conventional approach to legal research was the use of doctrinal methodology. It therefore involved the study of legal doctrines or principles, their application to current or future cases and development and possible evolution of the law. It also focused mainly on the reference to laws, legal rulings in case law and textbooks as sources of data in the process of research, this is because both law schools and academics placed emphasis on analytical research via the accumulation of facts and data using information already available from previous research.

Over the course of time, scholars began to focus on other functions of the law. It began to be recognised that law could be and is an instrument of social and economic engineering. For this reason, the boundaries of legal research began to expand and took into its ambit several new parameters.

First, it became not only the ascertainment and critical evaluation of existing laws and doctrines but also studies into the bases of legal rules by examining the legislative, administrative and judicial processes of the law[13]. It also evolved from not only tracing the evolution of the law in

[8] T. Hutchinson & N. Duncan. Defining and Describing What We Do: Doctrinal Legal Research *Deakin Law Review*[2012]vol.17, No 1

[9] A. L. Haruna and others, Legal Education and Social Change: The Nigerian Experience. *Unimaid Journal of Private Law*[2016] *vol2-1*

[10] ibid

[11] Y Aboki, *Introduction to Legal Research Methodology: A case for Writing Long Essay, Thesis, Dissertation, & Article*s. (Tamaza Press, Zaria2001)

[12] A Kabir, Ibid

[13] K. Vibhute and F. Aynalem ibid 21

order to understand its aims and objectives but also extended to a post legislative assessment of the law vis a vis its indented effect. Legal research acquired the characteristic of conducting a social 'audit' of laws to ascertain the 'gap' between legal idealism and social realities.

Though doctrinal research has been discussed above, an explanation of what constitutes a discipline and by extension 'interdisciplinary' must be presented here. A discipline is defined as a branch of knowledge that is studied at a higher institution[14] or a particular field of study. Interdisciplinary research will therefore connote research which does not limit itself to a single discipline but takes into consideration extraneous matters in other disciplines and their inter relationship with the major discipline that is the subject of study[15]. It happens, in the view of Skučaitė[16] and Latucca[17], when a researcher(s) uses concepts, knowledge, paradigms, tools, terminology and data from more than one discipline to arrive at answers to the research questions.

When the concept of interdisciplinary research is applied to research in law, it is also referred to as non-doctrinal or socio-legal research. It focuses on the inherent nature of the law and becomes a study to determine the extent to which the law serves its purpose. It therefore studies the relationship of law with people, social values and social institutions to determine the effect of one on the other or vice versa and becomes research into relationship of law with other behavioral sciences such as sociology, economics and psychology. It may also entail an empirical inquiry into matters such as the operation and application of law to determine its effectiveness or the extent to which compliance in achieved.

Interdisciplinary legal research takes into consideration that all laws are created as instruments of social engineering and a better understanding of the function, efficacy and/or provisions of a law are better obtained if the law or ruling is viewed in its proper context i.e the situation or circumstance it aims to regulate. It takes an external view of law as a social entity therefore while doctrinal legal research is research in law, interdisciplinary legal research is research about law[18].

However, though the terms interdisciplinary research and socio-legal are used by most scholars interchangeably, Banakar and Tarvers,[19] argue that a distinction exists between the two. They equate interdisciplinary research with the sociology of law as it involves the study of matters 'exogenous to the existing legal system' in order to 'construct a theoretical understanding of that legal system in terms of the wider social structures. Thus, while interdisciplinary research is a

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[14] <https://www.Businessdictionary.com> accessed on 13/8/2018

[15] A. L. Porter and others, *Interdisciplinary Research,* (Press2006); W T Mallon and S Burnton "The functions of Centers and Institutes in Academic Bio- medical Research". *Analysis in Brief*[2005, June] *5(1), 1-2*

[16] A. Skučaitė, *Interdisciplinary Research - Challenges and Opportunities for Actuarial Profession,*(Project Baltic Mobility 2 Baltmob2 2008), supported by Estonian Academy of Young Scientists

[17] L. R. Lattuca, "Creating interdisciplinarity: Grounded Definitions from College and University Faculty". *History of Intellectual Culture*, [2003]3(1), 1–20

[18] P Chynoweth, *Advanced Research Methods in the Built Environment.* (Stanford University Press 2008). 29

[19] R Banakar and M Travers, Theory and Method in Socio-Legal Research. <https://www.researchgate.net/publication/228262192>accessed 28/10/221

study of law in relation to matters extraneous to it, socio-legal studies is the use of tools of the social sciences for the collection of data in legal research.

As a matter of fact, legal scholars have, due to the hitherto focus on doctrinal methods of data collection, not yet evolved any specific methodology of their own for carrying out this new type of legal research. Researchers in the social sciences, on the other hand, have developed research methods and methodology especially suited for the systematic enquiry into social facts or behaviours as envisioned by the evolved legal research paradigms. For this reason, the new law researchers began to import the research methods traditionally used by sociologists to research in law. Therefore, interdisciplinary legal research not only involves the fusion or approach to legal research by looking at its relationship with other disciplines, it also encompasses the use of non-doctrinal or empirical methods to collect data during the research process.

The use of inter-disciplinary research in law has many advantages. Vibhute and Aynalem[20] have highlighted the fact that interdisciplinary research serves to establish whether a law is suitable and serving the needs of the society it aims to regulate, whether the intended beneficiaries of particular legislation have been impacted upon and examines the processes of the administration of a law. It also aids in ascertaining the societal forces that shape and continue to shape the evolution of a law or particular set of laws. Finally, it establishes whether a law has been successful in its primary objective which is the shaping or moulding of behaviour.

3. The Current State of Legal Research in Nigeria

A study of scholarly articles on legal research in Nigeria show a still pervading focus on the traditional approach and methodology to research. Egbewole[21] views legal research as the process followed by a lawyer to equip himself with information from the time of taking a legal brief to the effective presentation of the case in court. Though he acknowledges the need for the lawyer to educate himself on non-law matters that pertain to the case at hand, he limits this knowledge or search to perfunctory information just enough that the lawyer will not say, 'I don't know' if such becomes an issue in court. Akhihiero[22] began the advocacy for the change in the approach to legal research but limited the transformation to expanding the horizon from library-oriented research to using others sources such as the internet, legal software and the intranet. Indeed Olubiyi et al[23] recognise the impact and changes that technology have bought to legal research and education as sources of data are no longer limited to physical primary and secondary sources such as books, law reports and other such sources.

Following the same trend, Akpoghome and Idegbeiyan[24] in an empirical study of several universities in Nigeria, also highlighted and extracted the importance of the use of digital technology in legal research.

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[20] Ibid p 111

[21] W O Egbewole, Legal Research and Documentation in a Law Office(nd)

[22] P. A. Akhihiero, *The Face of Legal Research in the 21st Century*. (A paper presented at the law seminar held at the Conference Hall of the Edo State Ministry of justice, on the 27th day of June, 2008).

[23] I. A. Olubiyi and others, T*he Role of Technology in the Advancement of Legal Education and Practice in Nigeria.*(2015) 3

[24] U. T. Akpoghome and O J Idiegbeyan. 'The role of digital library in law research'. *International Journal of Library and Information Science* [2010]*Vol. 2*(6), 108-113.

However, to properly ensure the success of interdisciplinary research in law, Monti[25] believes it has to be introduced into the teaching methods for academics and law students. Thus changes have to be made to the curricula and content for teaching research methodology in law. Against this backdrop, both Ikpeze[26] and Haruna et al[27]study of curricula of various law faculties and teaching staff in comparison with several universities outside Nigeria, discovered that though most faculties have introduced law clinics with the aim of teaching practical skills to the lawyer in training, there is the need to shift research methodology from the tradition of long essay writing towards including training of research methods used in other disciplines

However, despite these lacunae, the recognition of the need for the shift from traditional to the revolutionary methodology for research in law led to the establishment of the centre for socio-legal research in 2006, and the work of the Centre was central to the development of the new Evidence Act in Nigeria, an evaluation of the act and continues to promote the use of innovations in the law to address the problems in the social, political and economic environment in Nigeria.

4. Observations and Recommendations

Law has emerged into a tool of most paramount significance as a catalyst for socio-economic change in any society and Nigeria is no different. A systematic investigation of its social context has become not only important but vital to the development of the law and the legal system itself.

Though the importance of a doctrinal research tradition in law cannot be over emphasized as it provides the foundation for all relevant research work, the changes in societal landscape and the overall function of law have necessitated the evolution to the approach to legal research. Developments in research paradigms in law recognise that doctrinal research may be too narrow and law must, to be true to its nature, be dynamic. Therefore, research into law need not remain stuck to methods (not necessarily unsuitable but) not sufficiently apt to the changing legal and societal landscape.

As research in law develops, we begin to see a fusion of, or a leaning away from a pure doctrinal approach. Researchers (and law makers) have begun to see the need for legal research to, at the end of the day, solve a pressing socio-legal issue. In essence, research must fill a 'gap' that had hitherto been unattended to by previous scholars.

Corollary to this, laws have been and will remain instruments of change in the society. Law is created to regulate and modify action towards an improved society. To do this it must be subjected to periodic review vis a vis the intendment of the legislature on the one hand and the needs of the society on the other. Studies have shown a proper assessment can only be achieved by a departure from traditional methods towards a fusion of that will incorporate best practices

[25] A. Monti, "Interdisciplinary" Legal Studies and the Emergence of New Academic Teachings: A Research Project on Law Courses in 19th-20th century Italy(2016).

[26] O. V. C. Ikpeze, 'Legal Education in the 21st Century Nigeria: Need for Diversity in Content Paradigm'**.** *Journal of Law, Policy and Globalization* [2015] *Vol.39 63-77*

[27] A. L. Haruna and others. (2016). Ibid

and paradigms from multiple relevant disciplines. Therefore, the only way forward is the embrace of interdisciplinary. In essence, law researchers and teachers of research methodology in law classes, must as a matter of expedience, orient and equip the future researcher with the tools necessary to not only carry out conventional legal research, but also be able to be involved in research projects that will help in serving the fundamental purpose of the creation of any law; an instrument of change.