https://doi.org/10.67209/abulj.2019.xtnr7qwd

AN APPRAISAL OF THE METHODOLOGIES FO LEGAL RESEARCH IN NIGERIA

BY

Dr. Dalhat A. Idris,* Eleje Hussein Suleiman,**

Nuhu Abdulsalam Tahir,* and Hamza Haladu******

Abstract

There are varieties of legal research methodologies that a legal researcher can choose to carry out research. These methodologies range from the general approaches of legal research to specific ones. The general methodologies consist of approaches such as Qualitative, Quantitative, Analytical, Case Study, Theoretical and Comparative Study. The specific methodologies include Doctrinal, Empirical and Teleological methods of research. The problem, however, is that doctrinal research constitutes the dominant research pattern to most legal researchers and excursion outside traditional legal materials is of no utility to them. Consequently, they remain ignorant to other alternative methods of research. Using the doctrinal method, this paper appraises the methodologies for legal research in Nigeria. The paper posits that Law Lecturers are pre – occupied with their teaching functions and use doctrinal method of research for the purpose of publications, promotions and to enhance their income. The paper recommends that Law Lecturers should include empirical and other alternatives to legal research.

Key words: Legal, Research, Doctrinal, Empirical, Methodologies

* Lecturer & Asst. Dean. Faculty of Law, Ahmadu Bello University, Zaria.

** LL.M Student Faculty of Law, A.B.U., Zaria.

*** LL.M Student Faculty of Law, A.B.U., Zaria

**** LL.M Student Faculty of Law, A.B.U., Zaria

1.1 Introduction

Legal Research, as every other field of human endeavor, has a pattern of performance which is commonly referred to as research method. In legal research, there is always a starting point for the researcher. He has to map out a strategy for the research operations and also decide what research technique to employ. *Methodology* then is defined as the logic of the application of scientific methods to the investigation of a phenomenon.[1] *Research method* is a process whereby materials relevant to a given situation are identified, gathered, stored, and retrieved for use. In the Legal field, it is accomplished through special procedures of information gathering, storage and use.[2] According to Amin, the term *Research methodology* of law means the exposition, the description, the explanation and justification of methods used in conducting research in the discipline of law.[3] There is yet no standardization in research methodology terminology across academic and professional fields or disciplines. There are a variety of methods you can choose to investigate a research problem ranging from *Qualitative, Quantitative, Analytical, Case study, Comparative, Theoretical, Doctrinal and Empirical approaches*. However, depending on the area of research or a research topic, a good researcher may combine two or more methodologies and this method is sometimes referred to as *mixed method* or *Triangulation* in some disciplines.[4] Given that research methods are in-exhaustive, the basic categories of legal research are explained in this paper viz; *General and Specific classification of legal research methodology*. The idea behind this classification is that the general classifications are dependent upon the specific classifications, reason being that one or a multiple of them may be subsumed into any of the specific classifications and not otherwise. For example, *Exploratory, Case study and Descriptive* subsume themselves into the *Empirical legal scholarship*. On the contrary, the specifics are always independent of the general. Therefore it would be right to say that the generals are the means through which the specifics are realized.

The problem, however, is that *Doctrinal Research* constitutes the dominant research approach and to most legal researchers, excursion outside traditional legal materials is of no utility and as such they remain ignorant to the alternative methods. In fact, to some, such approaches lead to the corruption of law as it is. Using the Doctrinal method, this paper appraises the various

[1] Adewale,T.(2017) *Basic Concept of Legal Research Methodology: A Critical Guide for Masters and Doctoral Students and Their Supervisors*, (2nd ed.) Princeton & Associates Publishing Co. Ltd. Lagos, P. 81
[2] Aboki,Y.(2013) *Introduction To Legal Research Methodology: A Guide For Writing Essays, Theses, Dissertations & Articles*. (3rd ed.) Ajiba printing production, Jema'a road, Kaduna. P. 2
[3] Adewale,T. *op cit, p. 82*
[4] *Ibid, pp. 83-84*

methodologies in legal research with emphasis on the specific classifications. To achieve this aim, the paper exposes new researchers to the alternative legal research methods and the challenges they need to overcome in order to undertake a robust research. The paper further highlights the two main classifications of methodologies in legal research and the extent to which some of them intertwine with each other. The paper finds that legal researchers in most cases shy away from exploring alternatives to *Doctrinal legal scholarship* and the challenges they face in disregarding same. The paper finally concludes by providing some recommendations on the way forward.

1.2 General Classification of Methodologies in Legal Research

This segment appraises the general classification of methodologies in legal research. Accordingly, it discusses methods of research such as *Descriptive/Analytical, Applied/Fundamental, Quantitative/Qualitative, Conceptual/Exploratory studies, Inter-disciplinary legal scholarship, Case study and Comparative study.*

1.2.1 Descriptive/Analytical Research

Descriptive research, as the name implies, describes the state of affairs as it exists at present. It reports only what has happened or what is happening. Hence, it does not go into the cause of a given phenomenon or situation. Thus, *Descriptive research* cannot be used for creating a causal relationship between variables.[5] On the other hand, *an Analytical study* goes beyond merely describing the characteristics to analyzing and explaining how or why it is happening. The major aim of the *Analytical Research* is to indicate the causality (connection) between variables or events.[6] The researcher uses his facts or information already available and makes his analysis to make a critical evaluation of the materials.[7]

1.2.2 Applied/Fundamental Research

Applied research or *Action research* aims at finding a solution for an immediate problem. Here, the researcher sees his research in a practical context. While in *Fundamental research* or *pure research* or *Basic research*, the researcher undertakes research only to derive some increased knowledge in a field

[5]Nelson.C (2016)"*Legal Research Methodology and Project Writing*" Ambrose Alli University Press, Edo state pg.47

[6]Adewale.T. *op cit, p. 89*

[7]Nelson.C. *op cit, p. 47*

of a theory. He is least bothered about its practical context or utility. Research studies concerning human behavior carried on with a view to making generalizations about human behavior falls under the category of *Fundamental or Pure research*. But if the research (about human behavior) is carried out with a view to solving a problem (related to human behavior), it falls in the domain of *Applied or Action research*. The central aim of *applied research* is to discover a solution for some pressing practical problem while that of *Fundamental research* is to find additional information about a phenomenon and thereby to add to the existing body of scientific knowledge.[8]

1.2.3 Quantitative/Qualitative Research

Quantitative research is based on the measurement of quantity or amount. It is applicable to a phenomenon that can be expressed in terms of quantity. The objective of *Quantitative research* is to develop and employ mathematical models, theories, and hypotheses pertaining to the phenomenon under inquiry.[9] This approach is objective in nature and concentrates on measuring phenomena. Because of its statistical nature, this type of research method is rarely used in law; it is meant for social science and science related research.[10] *Qualitative research* on the other hand is more subjective in nature. It involves examining and reflecting on perceptions in order to gain an understanding of social and human activities.[11] For example, when a researcher is interested in investigating the reason for, or motives behind certain behavior such as, why people do certain things? Or in investigating their attitudes towards, or opinion about, a particular subject or institution, say adultery or judiciary, his research becomes *Qualitative research*. Unlike *Quantitative*, *Qualitative research* relies on reason behind various aspects of behavior.[12]

1.2.4 Conceptual/Exploratory Research

Conceptual research is related to some abstract idea(s) or theory. It is generally used by philosophers and thinkers to develop new concepts or to re-interpret the existing ones.[13] The *Exploratory research method* involves tackling a new problem, issue or topic about which little is known. The aim of such studies may vary quite considerably. They may be to gain new insights into the

[8] *Ibid, p. 48*
[9] *ibid*
[10] Adewale,T. *op cit, p. 84*
[11] *ibid*
[12] Nelson.C. *op cit, p. 49*
[13] *ibid*

phenomenon, or to undertake a preliminary investigation before a more structured study of the phenomenon or to explicate the central concepts and construct a new one, or to develop a new hypothesis about an existing phenomenon.[14]

1.2.5 Inter-Disciplinary Legal Scholarship

One explanation of the rationale underlying this scholarship is that social science is necessary to understand the societal effects of law. To understand the actual effect of law in the society however, it is essential to go beyond the law and legal doctrine.[15] Under this formulation, the traditional *Doctrinal legal analysis* cannot answer important questions about the ways in which law functions within and affects the society. While law affects society, to what extent and in what ways does society affects law? Law is not merely the result of a detached case law analysis, but also related to societal factors such as psychology of litigants, juries and judges.[16] In this type of research, (example, law and economics, law and philosophy), a researcher typically is seeking non-legal information alongside legal information. Such a researcher does not require becoming an expert in all areas. However, it is necessary to become more familiar with resources beyond traditional treatises, primary legal authorities such as West Law and Lexis Nexus. By learning some basic information about major non-legal resources and by collaborating with others who have expertise in other subject areas, a law researcher can successfully handle most of his research questions.[17]

1.2.6 Comparative Study

According to Hayden, to "compare" is to examine two or more entities by putting them side by side and looking for similarities and differences between or among them.[18] It is acknowledged that the primary purpose of any exercise in legal comparison is the creation of a new knowledge. Kung defines comparative legal method of research as "*a unique, systematic and jurisprudential strategy applied by virtue of similarities and differences between the diverse legal systems, to acquire new understanding regarding the specific topic....*"[19] *Comparative method* may compare two or more legal systems; it may compare phenomena or

[14]Adewale,T. *op cit, p. 88*
[15]Kabir.A. (2010) "Nature of Legal Research and the Options for New Researchers" in Ahmad.A.B.(2010)(ed.) *Issues In Research Methodology In Law*, p. 4
[16]*Ibid, p.5*
[17]*Ibid.*
[18]Adewale.T. *op cit, p. 85*
[19]*ibid*

concepts within a legal system and many more.[20] Virtually, nearly all the people of the world should be regarded as having a mixed legal system. It actually seems impossible to find a contemporary system that could claim to be purely indigenous i.e. endowed entirely of original laws.[21] *Comparative study* assists in reform conducted by Law Reform Commissions and other related institutions. It helps in fashioning out the similarities and differences of an existing situation. For example, the present Penal Code applicable in northern Nigeria was an outcome of this type of research.[22]

1.2.7 Case Study

This is a research methodology that is commonly used in the social sciences. It is a research strategy and an *empirical inquiry* that investigates a phenomenon within its real life context. It is a *descriptive and exploratory analysis* of a person, group or events.[23]

In a nutshell, most of the aforementioned general methods do intertwine with each other, and sometimes may confuse a researcher. So, if one is not careful enough, he may end up mis-applying them although some of them are superfluous.

1.3. Specific Classification of Methodologies in Legal Research

This segment examines specific classifications of methodologies in legal research viz; *doctrinal or traditional method, empirical method* and by extension *teleological method.*

1.3.1 Doctrinal Method of Legal Research

This means theorizing without considering practical consequences. It is called a *visualized research, imaginative research, unpractical research, a visionary research, or a conceptual research.* Here, the researcher pays excessive attention to theory as opposed to practice.[24] Doctrinal research is a research into law as it stands in the books. It is speculative in nature in the sense that it consists of pondering over the essence and main qualities of law.[25] Traditional legal

[20] *ibid*
[21] Kabir.A.*op cit, p. 9*
[22] Danladi. K.M.(2015) *Comprehensible Legal Research*, Faith Printers International p. 21.
[23] www.pressacademia.org visited on the 18th/09/19 at 12:06pm
[24] Aboki.Y.*op cit, p. 3*
[25] Nelson.C. *op cit, p. 45*

scholarship holds that law is an autonomous discipline, standing alone and separate from other spheres of knowledge. "... a subject properly entrusted to persons trained in law and nothing else."[26] Langsdell while stating a proposition that was not only *descriptive* but *prescriptive*, states that "*the library is to us what the laboratory is to the chemist or the physicist and what the museum is to the naturalist.*"[27] Gilmore was of the view that law books were tools of a trade, called "plumber's tools" that existed to serve the craftsman/lawyer.[28] An important characteristic of this methodology is its almost complete autonomy from other spheres of scholarly knowledge.[29]

In doctrinal Legal research, there are some techniques to be employed by the *researcher* in order to have good and qualitative researches which are examined below.

1.3.2 Research Techniques in Doctrinal Research

Research techniques are the specific manipulative and fact finding operations, which are used to yield data about the social world.[30] They are as follows:

Observation on the Reading of Case Law

Fast reading, for research purpose, may be good. In our jet age, speed has become the idol of the time. Cars are made to triple speed; computers are constructed in order to cut short the time required for calculations. This trend to speed has led to the publication of books on how to read faster and more efficiently. One is however not convinced that "fast reading" produces the best result in studying and assimilating case law. On the contrary, fast reading may lead to an inaccurate comprehension of the *ratio decidendi* of a case, it may preclude the reader from appreciating the fine nuances of a case or of a point emerging from between the lines.[31]

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[26]Posner,R.A.(1962-1987)"*The Decline of Law as an Autonomous Discipline*":100 harv.L.Rev.(1987) in Ahmad,A.B. *op cit, p. 1*

[27]*Ibid. p.2*

[28]*Ibid.*

[29]*Ibid.*

[30]Gasiokwu,M.O.U (2006) *Legal Research and Methodology: The A-Z of Writing Theses and Dissertations in a Nutshell*, chenglo limited,158, zik Avenue, Uwani. Enugu p. 36

[31]*Ibid*

1. Comparing Different Reports of a Case

It yields a good result when one compares different reports of a given case. For instance, in a case one report is abridged (by omission of a passage) and the other is not abridged, the reading of a full judgment of a particular case law as set out in the weekly law report gives a quite different impression from that obtained from a shortened report. It is however a sound policy in respect of leading cases that such comparison may occasionally explain a specific passage which seems obscure or out of place.[32]

2. Reading a Case in its Historical Context

Another reason for the historical approach in analyzing statutory law is that, laws are not made in a vacuum. They are passed to meet some needs of the society. While they may not always reflect the true wishes of the people, they reflect nevertheless the historical and political spirit of the day.[33]

However, in spite of the beauty of the above method of research, it is worth noting that in the spheres of academic legal scholarship, the doctrinal methodology has been challenged by a variety of alternative methodologies. It is not the purpose of this paper neither to explain nor analyze the exact nature of this trend nor to take position on whether this shift is a positive or negative development. Rather, it is sufficient to emphasize that the shift away from the doctrinal is well established.

1.3.2 Empirical Method of Legal Research

This method of research involves the collection of facts and data through interviews, questionnaires etc. from target groups. The facts and data are later analyzed or experimented upon from which results are obtained. It is called *field oriented method of research.* This method was introduced to legal research by researchers from pure-science-based courses, where information or facts are collected outside and analyzed in laboratories. Some lawyers also believe that information and facts about law could be collected outside and analyzed in a library, office or chambers.[34] Greater use of *Empirical Research* in general helps in a better understanding of the law, how it operates and its interface with the environment or society where it operates. *Empirical research* can be a tool that can help bring to light the utility of a law or legal principle or the necessity for the

[32] *Ibid.*
[33] *Ibid.*
[34] Aboki, Y. *op cit, p. 3*

reform or repeal of an existing legislation.[35] It will be appropriate to give an example of where the *empirical method* can be applied. For instance, the National Assembly passed a Childs Right Act and also some states domesticated it, therefore, for a researcher to determine the impact of this Act on the society vis-à-vis its acceptance or otherwise by the society and its positive or negative impact on them, the researcher must not adopt the *Doctrinal* but the *Empirical method.*[36]

1.3.3 Hypothesis

A hypothesis usually posits a relationship between variables. Variables are factors or qualities the researcher wants to study and draw conclusions about. In true experiments, there are two variables whose relationship is the subject matter of study; they are the *independent* and *dependent variables.* The *independent variable* is the "*cause*" of the *dependent variable* "the *effect.*" For instance, in adjudicatory proceedings, an *independent variable* may refer to an element in the adjudicatory process such as the background characteristics of the judge and the *dependent variable* to be the outcome of the adjudication. (*Causes* and *effects*).[37]

1.3.4 Techniques for Testing a Hypothesis[38]

They include; *observation, questionnaire, interview and schedules.*

1. **Observation:**

This consists of the systematic viewing of a phenomenon relevant to the field of inquiry. It is a primary and most reliable source of information. For a rewarding result, the researcher must develop certain qualities one of which is the love for details of the phenomenon observed. Customs, habits, weaknesses and strengths of the group under observation must systematically and minutely be observed. Endurance and patience is very important here. Observation may be *participant* or *non-participant.*[39]

[35] Ahmad.A.B. *op cit, p. 8*
[36] Danladi.K.M. *op cit, p. 20*
[37] Gashowu. M.O.U. *op cit, p. 85*
[38] *Ibid*
[39] *Ibid*

2. Questionnaires

To arrive at the desired answer, the researcher will send many Questionnaires to his respondents in the hope that at least a sizeable portion of them would come out with the facts needed. A Questionnaire is based essentially on what one call closed questions by offering a list of ready alternative answers which can be quickly and systematically compared. Questionnaires could be *structured* or *unstructured.* A *structured questionnaire* is designed in advance and in a systematic manner. Questions are either open-ended or in closed form. In closed form, the responses are pre-determined and the respondents cannot add to the responses. An example of close-ended questions in its two formats is as follows:

i- Questions with multiple responses out of which the respondents have to select one or more rating as shown below:

"What is the number of students in legal research class?"

e) four and above c)twod)three b)one none (a

ii- Questions with a rating scale of discrete responses or continuous range. Sample of this format is demonstrated below:

"Lawyers tend to be more law abiding than police" please tick one of the following:

a) Strongly agree b) moderately agree c) strongly disagree

d) Moderately disagree e) neither agree nor disagree

or in an extreme form of a close-ended question, questions like:

"Have you ever been convicted by any court of law?"

a) Yes b) No

In open-ended questions, there is the possibility of obtaining a wide variety of answers and opinions. It is used frequently in questionnaires designed to study public opinions. They are difficult to answer and or analyze. Example of an open-ended question is:

"What do you personally feel are the most important problems the judiciary in Nigeria should try to take care of?"

Unstructured questionnaires are likely close interview guides. They are usually framed during the course of an interview.

The following guidelines are necessary for the construction of a questionnaire:

a) The vocabulary chosen should be simple and within the simple grasp of the least intelligent of the group studied.

b) The syntax (i.e. grammatical arrangements of words) should be clear and straight forward. Long sentences that require extended concentration on the part of the respondent defeat their purpose.

c) Professional jargon and technical words should be used only if the inquiry is directed to a selected group to whom the language is common.

d) Complex questions that require the respondent to go through several steps of reasoning before answering are undesirable.[40]

Interview 3

Is a controlled conversation between the interviewer and the respondent according to a pre-arranged schedule? The procedure allows for a face-to-face contact of the interviewer with the respondent. The respondent is usually told the purpose of the interview and confidence generated in him at the beginning.[41]

c) In social surveys, the *schedule* is similar to a *questionnaire*. As far as constructing is concerned, the only difference between the two is probably the fact that while schedule has to be used in the direct interview or direct observation and is filled by the field worker himself, the questionnaire is mailed to the respondent who fills and returns it to the researcher.[42]

1.4 Sample Selection

A sample, simply put, is a small portion of element taken from a large portion for the purpose of a given study. In research, the whole group from which the sample is drawn is technically known as the *universe or population.* The group actually selected for the study is known as *sample*. Since it is difficult for any researcher to study the entire universe or the total population (people or thing) that he proposes to investigate, it becomes incumbent upon him to select a portion of the elements taken from the population. The process of drawing these elements from the larger population or universe is called the *sampling method.*[43] Advantages of the sampling method include its economy, accuracy and adaptability.[44]

[40] *Ibid. pp.94-95*
[41] *Ibid. p. 95*
[42] *Ibid. p. 96*
[43] *Ibid. p. 88*
[44] *Ibid. p. 97*

1.4.1 Types of Sampling[45]

They include: *Random, Purposive, Stratified, Quota, Multi-stage, Convenience and Self-Selected Samplings.*

1. Random Sampling

It is the form applied when the method of selection assures each element or individual in the universe an equal chance of being chosen. It is more suitable in more homogenous and comparatively larger groups.

2. Purposive Sampling

When the researcher purposively or deliberately selects certain units for study from the universe, it is known as *purposive selection.*

3. Stratified Sampling

This is the combination of both *Random* and *Purposive selection.* Under this system, the universe is first divided into a number of strata or groups. Then from the stratum, certain number of items is taken on random basis. In the selection of strata, *purposive selection* method is used, but in selecting actual units from each stratum, random method is used. For example, if a sample of men and women telephone subscribers is desired, the researcher may first divide the list of subscribers into two parts; one consisting of men and the other of women, and then obtain a 10% stratified sample, the investigator draws a 10% sample from each list.

1. **Quota Sampling**

This is a special form of stratified sampling. Here, the universe is first divided into strata, and then the number to be selected from each stratum is decided. This number is known as quota. The field workers are generally asked to select the quota from the stratum according to their will.

2. **Multi-Stage Sampling**

This method is used in selecting a sample from a very large area. It is in fact a combination of Random sampling and Stratified sampling.

[45] *Ibid*, pp. 91-92

3. Convenience Sampling

Also known as *unsystematic, careless, accidental, or opportunistic.* A sample is selected according to the convenience of the field worker. This convenience may be in respect of availability of source list and accessibility of the units. It is used when the universe is not clearly defined.

d) Self-Selecting Sampling

Sometimes a sample is not actually selected but people themselves opt to be included or not be included in a sample.

It is interesting to note that procedure for selecting sample differs according to the type of sample selected. Certain fundamental rules however remain the same. These include:

a) The universe must be defined precisely

b) Before drawing a sample, the unit of the sample should be defined (e.g. men or women)

c) The appropriate source list which contains the names of the units of the universe from which the samples are to be selected should be prepared beforehand in case it does not already exist, and

d) The size of the sample to be selected should be predetermined.[46]

1.5 Teleological Research

This is a research method where the researcher uses his experience to arrive at a definite finding. For example, a retired President, Minister or even a Director can use his experience acquired during his tenure in office to write a Project, Article or a Book.[47]It must be noted that this type of research is also not commonly used, and suffice it to say, it can only be used by an expert who has acquired a lot of experience in other areas of similar researches.[48]

However. with utmost respect to the proponents of this novel method of legal research. it is submitted that the method is just like a narrative essays of one's past experience. Writings such as "*The Accidental Public Servant*" authored by Mal. Nasiru El-Rufa'i which is a clear replica of this method could

[46] *Ibid. pp. 90-92*
[47] Aboki.Y *op cit. p 3*
[48] Danladi.K M. *op. cit. p 22*

only be termed as a narrative essay not a research work. For any research to qualify as a good one, the process must have certain characteristics viz:

i It must as far as possible be controlled, rigorous, systematic, valid, verifiable, and critical

ii It is based on the works of others

iii It can be replicated and doable

iv It is generalizable to other settings

v It is based on sources that are logical, rationale and tied to a theory, in such a way that it has the potential to suggest directions for future research.

vi It generates new questions or is cyclical (recurring) in nature

vii It is incremental

viii It clearly states the variables or constructs to be examined

ix It must be valid and verifiable, such that whatever is concluded on the basis of findings is correct and can be verified by others.

x It addresses directly or indirectly some real problem in the world[49]

1.6 Conclusion

Methodology is very crucial in any branch of scholarship because an unreliable method produces an unreliable result. The reader wants to know that the data was collected or generated in a way that is consistent with accepted practices in the field of study. Also, the method must be appropriate to fulfilling the overall aims of the study. As such, this paper has discussed the two Fundamental Classifications of Methodologies in Legal Research.

This paper therefore finds as follows:

a. Law lecturers are pre-occupied with their teaching functions and use the doctrinal research for the purpose of publications, promotion and to enhance their income.

b. Legal research experts are not unanimous on the inclusion of Teleological research as a method of research.

c. Law lecturers are not adequately trained in the techniques of Empirical research

[49] www.guide2research.com posted on February 12,2014. Visited on 18th/09/19 at 11.59am

ısed on the above findings, this paper recommends as follows:

Teaching of legal research methodology should be reviewed to i of empirical and other alternative approaches.

Knowledge of other related sciences should be introduced to la enhance their knowledge of law.

Legal researchers should recognise the importance of the approach and recognise as a valid method of research.