

## IS LAW A PARASITIC DISCIPLINE? AN APPRAISAL OF RESEARCH METHODOLOGY IN LAW

*Ochem C.E\*, Ibe Okegbe Ifeakandu\*\**

### **Abstract**

*Research comprises primarily facts finding in a particular subject matter, facts ordering, fact systematizing and study in and predicting legal trends. Law is expressed in ambiguous language and leave gaps to be filled. During the process of its application from case to case, a lawyer or student has to carry our research to find out how law can be interpreted, this can be achieved through research, in effect, during the process of research, knowledge is added, problems are solved, inadmissible viewpoints are refuted and some scholarly conclusions are formulated. Research comprises defining and redefining problem, formulating hypothesis or suggested solutions, collecting, organizing and evaluating data, making deductions and reaching conclusion and lastly carefully testing the conclusions to determine whether they fit the formulated hypothesis. However, can law be studied in isolation, without reference to other discipline? By making reference*

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\* LLB, LLM, PhD. BL, Associate Prof. of Law Igbinedion University, Okada, Edo State Email ochemistry2006@gmail.com

\*\* BA, LLB, MPA, LLM, BL, Ph.D. Senior Research Fellow and Head of Department of Public Law, Nigerian Institute of Advanced Legal Studies, Abuja, Nigeria. Email: ibybenji@gmail.com; ibybenji@outlook.com.

*to other disciplines, does that make law a parasitic discipline? Is law actually a parasitic discipline? An answer to these questions is the fulcrum of this essay.*

## **Introduction**

When lawyers or other professionals are confronted with a problem, whether legal or otherwise, it may be difficult, if not impossible, for them to analyse fully the facts and determine all the applicable laws immediately. They have to undertake a careful study of the facts and law in order to decide the course of action to take and verify their conclusions through a process called research. Research is thus an incisive investigation and review of original and secondary stocks of knowledge for the purpose of contributing new and fresh knowledge to the existing stock of knowledge making for its advancement. It is the pursuit of truth with the help of study, observation, comparison and experiment. The search for knowledge through objective and systematic method of finding solution to a problem is research<sup>1</sup>.

The word research is used in this context to mean the use of library and other scientific source materials to seek recorded information on a particular problem, in order to authoritatively determine the rights, duties and liabilities of the parties<sup>2</sup>. Legal research, as every other field of human endeavour has a pattern of performance which is commonly referred to as research method. Method is the manner of procedure adopted by legal researchers in their bid to gain

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<sup>1</sup> Redman L.V. and Mory A.H. *The Romance of Research* (London, Sweet and Maxwell, 1923) p10.

<sup>2</sup> Ogunfolu T. "Legal Research and use of Source Materials" in Sanni Abiola (ed.) *Introduction To Nigerian Legal Methods*, (2<sup>nd</sup> edition) Ile-Ife, Obafemi Awolowo University Press, 2006 p263.

systematic, reliable and valid knowledge about legal phenomena<sup>3</sup>. According to Brandney, research questions which can be legitimately answered by reference to the statutes and judgments as well as academic commentaries on these sources, are within the domain of doctrinal or the black letter method of research.<sup>4</sup> In this study, attempt would be made to discuss, the meaning of research, the objective of research, the various types of research, the various categories of legal research and the distinction between research methodology and research methods. The paper will end with some conclusions as to whether law is a parasitic discipline or not.

### **What is Research?**

Research can be defined as an application of scientific procedures to discover answers to questions. Those procedures have been developed in order to increase the likelihood that information gathered will be relevant to the question asked and will be reliable and unbiased. There is no guarantee that any given record or undertaking will produce relevant reliable valid and unbiased information. However, scientific research procedures are more likely to surpass any method known to human<sup>5</sup>. In common parlance research refers to a search for knowledge. It can also be defined as a scientific and systematic search for pertinent

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<sup>3</sup> Gasioku M.O.U. *Legal Research And Methodology*, (Fab Educational Books,2000, Jos).p22.

<sup>4</sup> See Brandney A. 'Law as a Parasitic Discipline' *Journal of Law Society* Vol 25 No1 (1998) p71-84. see also Gasioku M.O.U. *Legal Research and Methodology*, *Op.cit* pp22-52..for further reading see also Bodansky, Daniel, 'International Law in Black and White' being a paper presented at a symposium on The Limits Of International Law, University of Georgia Law School. October, 28-29 2005.

<sup>5</sup> Akindele R.I. and Nassar M.L. *Research Methodology An Introduction*. (Stine Lad angelica Publications. Lagos,. 1907) p. 7.

information to a specific topic. In fact research is an art of scientific investigations.

According to Advanced Learners Dictionary,<sup>6</sup> research is a careful investigation or inquiry specially through search for new facts in any branch of knowledge. Redman and Mony<sup>7</sup> defined research as a systematized effort to gain new knowledge.

Gasiokwu<sup>8</sup> noted that research is a continuum. It is a gathering of evidence or information for ascertaining an assumption or verifying some hypothesis, it is also an inquiry for verification of a fresh theory or for supplementing prevailing theories by new knowledge. Gasiokwu stated further that legal research comprises primarily facts finding in a particular subject, facts ordering, fact systematizing and studying and predicting legal trends.<sup>9</sup> It should be noted that sometimes, law is expressed in ambiguous language and leave gaps to be filled, during the process of its application from case to case. A lawyer or student has to research to find out how law can be interpreted, this can be achieved through research. In effect, during the process of research, knowledge is added, problems are solved, inadmissible viewpoints are refuted and defined scholarly conclusions are formulated.

### **Objective and Subject Matter of Legal Research**

The objective of research is to discover answers to questions through the application of scientific procedures. In essence, the main aim of research is to find out the truth which is hidden and

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<sup>6</sup> Hornby A.S (ed) *Oxford Advanced Learners Dictionary of Current English* (London, Sweet & Maxwell 2009). p234.

<sup>7</sup> Redman and Mony A.V.H (n.1).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

which has not been discovered. Although each research study has its own specific purposes, research objectives can therefore fall into the following broad groupings:

1. To gain familiarity with a phenomenon or to achieve new insights into it<sup>10</sup>
2. To portray accurately the characteristics of a particular situation or a group.<sup>11</sup>
3. To determine the frequency with which something occurs or with which it is associated with something.<sup>12</sup>
4. To test a hypothesis of a causal relationship between variables<sup>13</sup>

On the other hand, the subject matter of legal research includes human beings, the society and legal relations. Human being as subject of legal research may be approached either individually or as a member of the society. In the second regard, human being may be examined as members of the society as a whole or as members of a particular class of people or social strata. The relationships between these different strata of society are regulated by a body of rules commonly referred to as law.

In this vein, law could be referred to as an instrument both of social control and of social change. The attitude of members of the society towards legal precepts or legal institutions is dictated by the relationships which the law sets out to establish or regulate at any particular given time or places as determined primarily by the class interest of the law makers. The law that regulates all aspect of human social life are made, operated, implemented and enforced by

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<sup>10</sup> This is usually referred to as a exploratory research studies.

<sup>11</sup> This is usually referred to as descriptive research studies.

<sup>12</sup> There is known as diagnostic research studies

<sup>13</sup> This is known as hypothesis testing research studies.

human beings through various legal instruments. In this sense, the purpose of legal research as adumbrated by Gasiokwu<sup>14</sup> may entail two basic aims.

- a. To ascertain the legal consequence of a specific set of facts
- b. To study the functioning of particular legal institutions in a specific economic, social and political control.

These according to the learned author<sup>15</sup>, might be motivated by the following;

- i) The need to gain an insight into the existing state of affairs and to aim at a diagnosis of forces and factors which determine the studied section of social relationship.
- ii) The testing of certain hypothesis upon which legislation could be based and
- iii) The need to disclose whether enacted legal precepts have attained their intended effects on the other hand have introduced some unexpected effects.

### **Significance of Research**

From the foregoing, it can be seen that, research inculcates scientific and inductive thinking and it promotes the development of logical habits of thinking and organization. Other disciplines such as economics, government policy and business, among others, have also benefited from research and its findings.

Research provides the basis for nearly all government policies in our economic system. For instance, government budgets rest in part on an analysis of the needs and aspirations of the people and on the availability of revenues to meet these needs. The cost of needs has

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<sup>14</sup> Gasiokwu *op cit* p. 4.

<sup>15</sup> *Ibid.*

to be considered against probable revenue and this is an area where research is most needed. Through research we can devise alternative policies and can also examine the consequences of each of these alternatives.

Apart from law, research has its special significance in solving various operational and planning problems of business and industry. Operational research and market research, along with motivational research, are considered crucial. Their results assist, in several ways to facilitate business decisions. Market research is the investigation of the structure and development of a market for the purpose of formulating efficient policies for purchasing, production and sales. Operations research refers to the application of mathematical, logical and analytical techniques to the solution of business problems of cost minimization, profit maximization which, cumulatively constitute optimization problems. Motivational research of determining why people behave as they do is mainly concerned with market characteristics. In other words, it is concerned with the determination of motivations underlying the consumer (market) behavior. All these are of great help to people in business and industry who are responsible for taking business decisions. Research with regard to demand and market factors has great utility in business. Given knowledge of future demand, it is generally not difficult for a firm, or for an industry to adjust its supply schedule within the limits of its projected capacity. Market analysis has become an integral tool of business policy these days. Business budgeting, which ultimately results in a projected profit and loss account, is mainly on sales estimate which in turn depends on business research. Once sales forecasting is done, efficient production and investment programmes can be set up around which are grouped the purchasing and financing plans.

Research, thus, replaces intuitive business decisions by more logical and scientific decisions.

Research is equally important for social scientists in studying social relationships and in seeking answers to various social problems. It provides the intellectual satisfaction of gaining additional knowledge for practical utility and better functional efficiency. Research in social sciences is concerned both with knowledge for its own sake and with knowledge for what it can contribute to practical concerns. “This double emphasis is perhaps especially appropriate in the case of social science. On the one hand, its responsibility as a science is to develop a body of principles that make possible the understanding and prediction of the whole range of human interactions. On the other hand, because of its social orientation, it is increasingly being looked to for practical guidance in solving immediate problems of human relations.

### **Types of Legal Research**

Basically, there are several types of research, both legal and non-legal but for the purpose of this essay we will lay emphasis on the following types of research:

Analytical, Historical, Comparative, Statistical, Evaluation, Quantitative, Qualitative, Conceptual, Empirical, Descriptive, among others.

#### **i) Analytical Research**

Analytical research is based on the use of facts or information already available, which are analysed to make a critical evaluation of the material. An analytical research is primarily an exploration of what is the existing law. A good analytical researcher must know the legislative competence of the legislative arm of government, particularly the exclusive legislative lists, the concurrent legislative

list as well as the residual legislative list of the Constitution of a federal system of government. With these legislative competences, the researcher has to turn to the existing statutes on the subject matter under review. In situations where the subject matter of research is covered by codes such as criminal code, penal codes criminal procedure law, doctrines of common law, statutes of general application or the rules of evidence, to mention but a few, the researcher has to discover the relevant statutory laws from a variety of sources.

Similarly, case law occasionally contain suggestions and reasoning, which helps in arriving at an acceptable conclusion. It is the task of an analytical researcher to put all these into consideration in his quest for knowledge. Where there are conflicts in judicial decisions the analytical researcher must direct attention to such conflicts to support his conclusions and possible reform.

#### ii) Historical Research

Generally legal system all over the world are not static, they are always dynamic owing to the fact that new laws are enacted continuously while some legal provisions and norms lose their efficacy and binding force. Historical research method therefore aims at describing legal enactments, statutes or institutions in their unique historical perspectives. Historical research is desirable especially when it becomes necessary to find out the previous law in order to understand the reason or reasons behind the existing law and the course of its evolution. The past often explains the present vividly. Also, present statutory provisions may raise meaningful queries and it becomes necessary to explore the circumstances in which the present position emanated. For example, the *Heyden*

case<sup>16</sup> was based on historical perspective to the interpretation of statutes; Lord Baron put it thus,

For the same and true interpretation of all statutes, in general (be they penal or beneficial restructure or enlarging of the common law) four things are to be discovered and considered:

- (i) What was the common law before the making of the Act?
- (ii) What was the mischief and defect for which the common law did not provide
- (iii) What remedy the parliament has resolved and appointed to cure the disease of the commonwealth and
- (iv) The true reason for the remedy...<sup>17</sup>

Historical research may reveal that alteration in the law in some particular areas which are now tentatively under consideration had already been thought of, in the past in earlier attempts to reform of the law but had been rejected for sound and valid reasons. Also historical research will often show that a particular existing provision of the law that was justifiable at the time when it was introduced, is no longer so justifiable because the reasons that justified the original proposition in the earlier provisions are no longer viable.

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<sup>16</sup> (1584) 3 Co. Rep. 7b.

<sup>17</sup> Per Sir Edward Coke. For further reading on historical research see Ames J.B. *Lectures On Legal History and Miscellaneous Legal Essays* (Cambridge . Howard University Press 1913). Ibbetson, D. *Historical Research in Law*. In P. Cane and M. Tushnet (eds) *The Oxford Handbook Of Legal Studies*, Oxford, Oxford University Press, 2003.

### iii) Comparative Research

Comparative research involves the study of the laws of different states on any given subject matter whether for the purpose of law reform in a country or for determining the suitability of any legal precept existing in one state as against the practice of other states<sup>18</sup>. Comparative research is basically comparing laws of several countries. Legislatures imitate each other and law reform bodies also try to learn from each other's experience.<sup>19</sup> The consideration will necessitate comparative approach to research at any point in time.<sup>20</sup>

It should be noted that like most types of legal research, they are likely problem that may be encountered in the course of the research. One of the problems which may be encountered by a comparative researcher is which country to choose for study, what books and other materials to consult and how much of the materials collected for the purpose of the research will be reliable, the choice of the material for consultation may not easily be available in one convenient form or place. This is another problem that a comparative researcher may encounter. Even when such materials are available, they may not be of uniform standard. Their ranging accuracy and reliability cannot always be safely and easily accessed. Bashki<sup>21</sup> however suggested alternative way of commending research into the prevailing position in foreign country in a particular topic as follows:

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<sup>18</sup> Gasiokwu MO.U. *Op. cit.* p. 8.

<sup>19</sup> For example the Nigeria Evidence Act 2011 was base on Secton 65B to Indian Information Technology Act.

<sup>20</sup> Hilary O. Onwe "The Role of Historical Evidence in Constitutional Interpretation" *EBSU Journal of Law and Juridical Review 2010*, p281.

<sup>21</sup> Bakshi P.M. 'Legal Research and Law Reform' 24 *J.I.L.*, (1982) p. 405.

- 1) The researcher could begin with a book on the legal system of that community and then, proceed to an explanation of the particular point with the key of the bibliography that might have been given in that books
- 2) The researcher can try to locate if possible, a report of a law reform body of the foreign country concerned. This if located, will be a very valuable source of information, because the material contained in such reports is usually of a very high standard.

iv) Statistical Research

Statistical research is mainly concerned with the collection and collation of data which are agreed to be a truly specialized subject. It involves the gathering of statistics which will give an idea of the actual working of the law. It provides quantitative illustrations of the dynamics of certain social process or services to arrange the sets of available data in numerical terms. Statistical research is useful for the verification of hypotheses concerning the influence of definite factors upon law. It may lead for instance to field work, sample survey , opinion polls etc which are found to be better conducted by qualified social workers with aptitude and professional training for that purpose.

v) Quantitative Research

Quantitative research is characterized by three basic phases; finding variables for concept, appraising them in the study and evaluating them. This type of research approach tends, in general, to abstract from particular instances to seek general description or to test causal hypotheses. It seeks measurements and analyses that are

easily replicable by other researchers<sup>22</sup>. The replication of methods is seen by supporters of quantitative analyses as very important, because the work is made subject to verifications which provide legitimacy, reproductive reliability and objectivity<sup>23</sup>. Statistical reliability is sought by undertaking a random sample of cases from which empirical results can be gleaned. Studies employing quantitative methods are therefore more often than not, carried out involving a number of cases or subjects which are independent in context or, put differently, are studies in which the researcher does not physically interact with the subject of analysis. A case in point is analysis based on statistics of several welfare states countries. These statistics can be collated from various sources without having to visit the countries involved. In this type of research, the researcher is said to be detached from the subject of study<sup>24</sup>.

Quantitative research pejoratively known as number – crunching<sup>25</sup>; it uses, techniques that apply more to numerical data. Researchers develop variables or concept which can be measured and converted into specific data – collection techniques. These techniques produce precise numerical information which can be understood as the empirical representation of the abstract concepts. Quantitative techniques include identification of general patterns

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<sup>22</sup> Jonathan Grix *Demystifying Postgraduate Research From MA To Ph.D.* London, University of Birmingham Press 2001, p. 31. See also Kings G. *et al. Design Social Inquiry. Scientific Inference in Qualitative Research* (Princeton, Princeton University Press, 1999) p. 3.

<sup>23</sup> Jonathan Grix *ibid* p. 3.

<sup>24</sup> Neuman, W.L. *Social Research Methods: Qualitative and Quantitative Approaches* (4<sup>th</sup> ed.) (Boston Allyn & Bacon, 2000) p. 16. It should be noted however that no one can be fully detached from any type of research or offer a value free analysis – precisely because researchers.

<sup>25</sup> Jonathan Grix *op cit*, p. 32.

and relationships among variables, testing hypotheses and theories and making predictions based on these results.

vi) Qualitative Research

Qualitative research is seen as almost the complete opposite of quantitative research. It usually involves in-dept investigation of knowledge through, for example, participant observations employing the interviewing technique, archival or other documentary analyses or ethnographic studies. These methods do not rely on, numerical measurements. But may involve some element of numerals<sup>26</sup>

Qualitative researchers generally seek to amass information from their studies or for example, a particular event, decision, institution location, and issue of legislation<sup>27</sup> with a view to discerning pattern trends and relationship between key variables. This type of research, involves the interpretation of data, whereby the researcher analyses few cases, in their social and cultural context over a specific period of time. It may develop grounded theories which emphasis tracing of the process and sequence of events in specific settings.

In contrast to quantitative research, the qualitative researcher is not detached from the object of the research, but positively interacts with the subject of study. Critics of this type of research often point out that the studies are usually small-scale and not generalisable beyond the case researched.

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<sup>26</sup> See Ragin, C.C. *Construing Social Research. The Unity and Diversity of Methods*: London, (Thousand Oaks Pine Forge Press,1994) p. 91

<sup>27</sup> King G. et al *op cit* p. 4.

This method of research has enabled complementary research into such topics as the nature of dictatorship, by interviewing people who lived under such conditions and by uncovering the texture of the relationship between the state and its citizens. It is unlikely that such findings would be produced by statistical data alone. The aim of qualitative research according to Grix<sup>28</sup> is to weigh up and choose the best combination of possible methods to shed maximum light on their chosen topic. Qualitative research in a nutshell is concerned with qualitative phenomenon that is, phenomena relating to or involving quality of a kind. For instance, when we are interested in investigating the reason for human behavior for example, why people think or do certain thing in a particular manner, we quite often talk about motivation research which is , an important type of qualitative research. It aims at discovering the underlying motives and desires, using in depth interviews for the purpose.

vii) Conceptual Research

Conceptual research, is research that relates to some abstract ideas or theory. It is generally used by philosophers to develop new concepts or to reinterpret existing ones.

viii) Empirical research

Empirical research relies on experience or observation often without due regard for system and theory. It is data- based research, resulting in conclusions which are capable of being verified by observation or experiment. It can also be described as experimental types of research. In an empirical research it is necessary to get facts firsthand from their source, and actively doing certain things to stimulate the production of desired information. In empirical

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<sup>28</sup> Jonathan Grix *op cit* p. 33.

research the researcher must first provide himself with a working hypothesis as to the probable results. He will then set up experimental designs which he thinks will treat the persons or materials concerned so as to bring forth the desired information. Such research is thus characterized by the experimental control over the variables under study and his deliberate manipulation of one of them to study its effect. Empirical research is appropriate when proof is sought that certain variable affect other variable in some way. Evidence gathered through experiments of empirical studies is today considered to be the most powerful support possible for a given hypothesis.

ix) Descriptive Research

Descriptive research includes every survey and fact-finding enquiries of different kinds. The major purpose of descriptive research is description of the state of affairs as it exists at present. In social science and business research, we often use the term *ex-post facto* research for descriptive research studies. The main characteristic of this method is that the researcher has no control over the variables; he can only report what has happened or what is happening. Most *ex post facto* research projects are used for descriptive studies in which the researcher seeks to measure such items, as frequency of shopping preferences of people in similar data *ex post facto* studies. It also includes attempts by researchers to discover cause even when they cannot control the variables. . This method of research utilizes descriptive method and survey methods of all kinds, including comparative and correlative methods. This is in contrast with analytical research where the researcher has to use facts or information already available and analyses them for a critical evaluation of the material.

## **Categories of Legal Research**

Legal research can be classified into doctrinal and non-doctrinal<sup>29</sup>. Doctrinal research is the research into doctrines. It involves application of the power of reasoning. While non -doctrinal research involves research into law as it ought to be. It is pertinent to discuss these two methods of research respectively for clarification.

### ***Doctrinal Research***

Doctrinal or theoretical legal research can be defined as research which asks what the law is in a particular area. It attempts to explain law solely through the internal evidence offered by judgments and statutes. In doctrinal research approach, the researcher seeks to collect and then analyse a body of case law together with any relevant legislation (the so called primary sources)<sup>30</sup>. This is often done from a historical perspective and may also include secondary sources such as journal articles or other written communications on the law or legislation. The researcher's principal or sole aim is to describe a body of laws and how they apply. In doing so, the researcher may also provide an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactments. In this regard, doctrinal research can be seen as normative or theoretical.

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<sup>29</sup> See Brandney A. *op.cit* pp71-84.see also Gasioku MOU. *Legal Research and Methodology*, *Op.cit* pp22-52..For further reading see also Bodansky, Daniel, 'International Law in Black and White' being a paper presented at a symposium on the limits of international law, University of Georgia Law School. October, 28-29 2005.

<sup>30</sup> See Aulis Aarnio *Essays On The Doctrinal Study of Law* Finland, Springer 2011, p. 19 see also Mike Mc Cornville and Wing Hong Chui *Research Methods For Law* (Edinburg, Edinburg University Press 2007) p. 3.

Many legal researchers do not however readily distinguish between research directed at finding a specific statement of law and an in-depth analysis of the process of legal reasoning. Glanville Williams<sup>31</sup>, in his book *Learning The Law* identified two types of research, one being the task of ascertaining the presence state of the law on a particular point, the other being the sort of work undertaken by lawyers who wish to explore at greater length some implication of the state of the law. Glanville stated further, that discourse may, infact be describing one sort of research which only differs in degree from that being doctrinal research. The methodology involved is common to both approaches<sup>32</sup>.

Over the years, a number of titles on legal research are available and has been adopted as textbook for legal research courses across the world. Admittedly, most of these textbooks on research methods for law are non-traditional interdisciplinary research projects. These texts are able to equip students with basic research skills including the knowledge of sources of legal authorities locating cases and statutes, the uses, indexes and citations and the use of computer information retrieval systems. Doctrinal research relies exclusively on using court judgment and statutes to explain law.

Most law colleges have their own specialized libraries full of raw materials for external analysis which are law texts, case law, legislations and increasingly materials' via the internet. There is no need to go outside and research the material realities of people's everyday lives. The doctrinal research<sup>33</sup> aims at stigmatizing,

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<sup>31</sup> Glanville Williams *Learning The Law* (12<sup>th</sup> ed), London, (Sweet & Maxwell, London, 2002) p. 206.

<sup>32</sup> *Ibid* pp. 206-207.

<sup>33</sup> Also called block letter research.

rectifying and clarifying the law on any topic by a distinct mode of analysis to authoritative texts that consist of primary and secondary sources. One of the assumptions is that the character of legal scholarship is derived from law itself.

### ***Non Doctrinal Research***

All other legal research can be generally grouped within three categories: problems, policy and law reform based research. It is accepted according to Dobinson and John<sup>34</sup> that these categories are not mutually exclusive and are identified in terms of an assessment of what a piece of research is about. They can be considered together because of the often occurring link between them. In fact, all four categories of research, doctrinal, problem, policy and law reform is part of a large scale research project<sup>35</sup>. A researcher for example, could begin by determining the existing law in a particular area (doctrinal). This may then be followed by a consideration of the problems currently affecting the law and the policy undermining the existing law, highlighting for example, the flows in such policy. This in turn may lead the researcher to propose changes to the law (law reform)<sup>36</sup>.

Non doctrinal research studies the actual working of the law. It studies the relationship between law and other behavioral sciences. Here the emphasis is not really on legal doctrine and concepts but on people, society values and social institutions<sup>37</sup>. Non-doctrinal research takes either some aspects of the legal decision process or the people and institution supposedly regulated by law as the focus

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<sup>34</sup> Tan Dobinson and Francis John 'Qualitative Legal Research' in Miko McConville and Wing Hong Chii ed. *Research Methods For Law op cit* p. 19.

<sup>35</sup> *Ibid* 77. 20.

<sup>36</sup> Gasiokwu *MOU op cit* p. 13.

<sup>37</sup> *Ibid* p. 14.

of study. In non-doctrinal research, data necessary to answer questions is not ordinarily available in conventional legal sources<sup>38</sup>. Hence field work is usually required in this type of research. Gasiokwu<sup>39</sup> opined that non-doctrinal research may seek the following:

- a) Assess the impact of non-legal events upon legal decision processes
- b) Identify and appraise the magnitude of the variable factors influencing the outcome of legal decision making and
- c) Trace the consequences of the outcome of legal decision making in terms of value, gains and deprivation for litigants, non-litigant, and non-legal institutions.

The answers to the above problem, he stated further will require excursion outside the traditional legal materials. It may necessitate the empirical research which is non-doctrinal.

### **Distinction between Research Methodology and Research Methods**

Methodology is very often confused and used interchangeably with methods to avoid this confusion, it is appropriate at this juncture to explain the difference between research methodology and research methods.

Research methodology is a way to solve the research problem systematically. It may be understood as a science of studying how research is done scientifically. In it we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them. It is necessary for the

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Op.cit.*

researcher to know not only the research methods/techniques but also the methodology that is, the process or mode. Researchers not only need to know how to develop certain indices or tests, how to calculate the mean, the mode, the median or the standard deviation, how to apply particular research techniques, but they also need to know which of these methods or techniques, are relevant and which are not, and what would they mean and indicate and why. Researchers also need to understand the assumptions underlying various techniques and they need to know the criteria by which they can decide that certain techniques and procedures will be applicable to certain problems and others which may not. All these mean that it is necessary for the researcher to design his methodology for his problem as the same may differ from problem to problem. For example, an architect, who designs a building, has to evaluate the basis of his decisions consciously, i.e., he has to evaluate why and on what basis he selects particular materials and not others.

From what has been stated above, we can say that research methodology has many dimensions and research methods do constitute a part of research methodology. The scope of research methodology is wider than that of research methods. Thus, when we talk of research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself or by others. Similarly relevant is why the hypothesis has been formulated, what data have been collected and what particular methods have been adopted, why particular technique of analyzing data has been used and a host of similar

other questions are usually answered when we talk of research methodology concerning a research problem or study.

Research Methodology is also a branch of science concerned with methods and techniques of scientific enquiry, in particular with investigating the potential and limitations of particular techniques or procedures. Methodology pertains to the science and study of methods and the assumptions about the ways in which knowledge is produced. A certain methodological approach will be underpinned by and reflect specific ontological and epistemological assumptions. These assumptions will determine the choice of approach and methods adopted in a given study. Methodology deals with the logic of inquiry of how theories can be generated and subsequently tested.

On the other hand, Research methods may be understood as all those methods/techniques that are used for research. Research methods or technique, therefore refers to the methods the researchers' uses in performing research operations. In other words, all those methods which are used by the researcher during the course of studying his research problem are termed as research methods. Since the object of research is to arrive at a solution for a given problem, keeping this in view, research methods can be put into three groups as follows:

1. In the first group we include those methods which are concerned with the collection of data. These methods will be used where the data already available are not sufficient to achieve at the required solution;
2. The second group consists of those statistical techniques which are used for establishing relationships between the data and the unknowns;

3. The third group consists of those methods which are used to evaluate the accuracy of the results obtained.

Research methods falling in the above stated last two groups are generally taken as the analytical tools of research which is the pursuit of knowledge. There is a wide variety of methods ranging from discourse analysis, archival retrieval of data interviews, direct observation, comparisons of data and documentary analysis to survey questionnaires and statistics. Certain methods can be used in either qualitative or quantitative research. Although there is a general and artificial division between both types of approach, the social science research is often carried out using a combination of both. The methods employed in a project are usually informed by the methodology chosen and the question asked, rather than the other way round.

### **Is Law a Parasitic Discipline?**

From the above analysis, it stand to question that in the process of research, several methods are adopted in arriving at a viable legal research, can law be conveniently conducted without reference to other discipline, can law be isolated from other discipline, the answer to these question will lead us to the postulation of Rosco Pond<sup>40</sup> that law is a social engineering. Pound likened the work of the jurist to social engineering. According to him, jurisprudence is a science of social engineering, thus society is a machine and the jurist tries to eliminate frictions and breakdowns and improve the functioning of the machine<sup>41</sup>, he went further to define law as a social institution to satisfy social wants, the claims and demands

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<sup>40</sup> An American Jurist.

<sup>41</sup> Adaramola, F. *Adaramola Jurisprudence* (4<sup>th</sup> ed), (Durban, LexisNexis Butterworths, Durban, 2008) .p.268.

involved in the existence of civilized society by giving effects to as much we may with the least sacrifice, according to Pound therefore, the purpose of law is to fulfill human wants. The work of a jurist as propounded by Pound is to provide the legislature and the judge with essential information about human wants, he then suggested eight points programme of action for jurist. Amongst these are, studying the actual effect of legal rules on society, conducting more research prior to legislation on any subject, studying ways and means of making legal rules more effective in action, this includes reference to legal aids, and therefore involves a study of whether or not the courts are truly open to people. Conducting research into sociological legal theory, that is, the relation of legal development to its social background. Placing stress on the need for reasonable and just solutions of individual cases rather than undue concern with strict legal rules, studying the judicial functions, and above all making effort more effective in achieving the general purpose of the legal order, this includes mass education, mass orientation, and mass mobilization. It also involves strengthening the courts and the hand of the law and lawmen in order to facilitate the defeat or avoidance anathemas like ouster clause in legislation.

The sociological school of jurisprudence draws a list of all the interests which a legally protected in society. The list is supposed to be neutral and impartial and there was to be no indication of which interest are more important than others, this school also places these human concerned under three categories, to wit; Public interest, individual interest and finally social interest.

Law as a social engineering precludes law from being mechanical but innovative, by so doing it gives room for logical , dynamic and flexible means of legislation rather that the static method of

legislation. By this, law is not a parasitic discipline, it create room for innovation and prevent predetermine result. The sociological school of jurisprudence provides that society cannot be mechanically manipulated, like a piece of machinery. Rather mankind, as a living entity, can be continually and progressively stimulated, and motivated, strategically managed, organized, educated, provoked, pacified, directed and guided. Mankind can also be coordinated, controlled and when necessary coerced in order to reduce the area and intensity of friction, contradiction and centrifugality among components part. All this with a view to ensuring the peaceable growth and development of the corporate whole through the fullest facultative enhancement of its individual components parts, and healthy competition among all its members, makes law, in a class of its own, and a dependably ally in the scheme of things, prevents law from being a parasitic discipline. To answer the question clearly therefore, law is not a parasitic discipline, it got a purpose, it exist for the satisfaction of human wants and articulation of human need through the law.

## **Conclusion**

From this discourse, it has been emphasized that research refers to the search for knowledge, it is the scientific and systematic search for pertinent information on a specific topic in fact, research is an act of scientific investigation. It is thus an original contribution to the existing stock of knowledge making for its advancement. It is the pursuit of truth with the help of study, observation, comparison and experiment, in short, the search for knowledge through objective and systematic method of finding solution to a problem is research<sup>42</sup>.

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<sup>42</sup> Redman L.V. and Mory A.H (n.1).

Law is functional and not rigid, it gives room for innovation, law is positive, blindfolded from extraneous matters, impassive and scrupulously exact, but when the judge turns to apply the principle and rules to the facts, justice and law, speaking metaphorically, cannot remain in that position, it must for its own sake and the sake of society, pull off the blindfolded, throw wide open, not only its two eyes but all of its six senses in order to perceive the intricate interplay of relevant factors for the benefit of mankind, to this end law is not a parasitic discipline.