Pakistan Languages and Humanities Review
www.plhr.org.pk

RESEARCH PAPER

Approaches and Methodologies in Comparative Legal Studies: An Abstract Framework as Methodology

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DOI	http://doi.org/10.47205/plhr.2022(6-III)41

ABSTRACT

The objective of the present study is to propose an abstract framework as methodology to carry out comparative legal studies. Legal research is a systematic and complicated activity having various methods and comparative legal studies is one of such methods. The comparative law has gained popularity among legal researchers and it aims at comparing the laws of one jurisdiction or legal family to the laws of another jurisdiction or family. Despite the growing interest in comparative legal studies, its definition, scope, approaches and methodologies are unclear. The present study, by deploying doctrinal research method, intends to fill this gap by discussing the nature, scope, and approaches in comparative law. In addition, the present study, after analyzing various methodologies in comparative law, recommends six-steps methodology for comparative legal studies.

Keywords	Comparative Law Methodology, Functionalist Approach, Hermeneutical Approach, Legal Research, Structural Approach

Introduction

There are various ways namely divine revelation, intuition, insight, observation and authoritative dictates to gain knowledge about various events happening in the universe (Mertens, 2019). However, Karl Pearlson (1900) believes that scientific methods of analysis are the only way to gain reliable knowledge about universe (Pearlson Karl, 1900). The scientific methods are such methods of analysis which are objective, logical and systematic. The academic research is also an attempt to unveil the truth about various occurrences in the universe, so, it should be scientific if one has to draw objective conclusions. The academic research and its conclusions will not be fruitful and objective if the method of analysis is not scientific and systematic. The research is different from other modes of learning in a sense that it is systematic way of investigation since it requires researchers to assemble, examine, construe and use data in an objective way (Mertens, 2019). The term research refers to analyzing data to generalize its results either in the form of theory or to extend or verify or improve the existing knowledge ((Naidoo, 2011, see also, Stephenson and Slesinger, 1930). The researchers argue that research should have relevance, outcomes, theoretical orientation, linkage with beliefs and practices, and ethical framework (Naidoo, 2011). In addition, academic research is carried out to comprehend, define, foresee, or observe a specific phenomenon to enable human beings to cope with it (Mertens, 2019). There are various kinds of research including pure, applied, explanatory, exploratory, descriptive and interdisciplinary research

while keeping in view the objectives and areas of research. For instance, pure research is carried out to expand understanding of specific common issues and their solutions, applied research is conducted as a response to a social issue and to offer a valid solution, exploratory research is concerned with the examining the magnitude or extent of specific issue, descriptive research aims at careful observation and documentation of specific issue, and explanatory research is carried out to explain a particular phenomenon under study (Bhattacherjee, 2012, see also Slesinger D and M Stephenson-Social Research- Encyclopedia of Social Sciences Volume 09 MacMillan Company).

Like that of research in social sciences, legal research is also a systematic and complicated activity having various types. Chynoweth (2008) discusses various types of legal research. He points out that doctrinal legal research is about the formation of legal doctrines by analyzing the legal rules. This research, according to him, is carried out with the objective of discovering and developing legal doctrines. He adds that laws play a normative role in this type of research; hence, the validity of doctrines depends upon the consensus of the legal fraternity (Chynoweth, 2008). In addition, he also discusses interdisciplinary research, which is concerned with "external factors." He believes that interdisciplinary research is concerned with analyzing legal rules in light of the historical or social context and from the perspective of the advancement in science and technology. He adds that in this research, the epistemological nature of law is studied as an inquiry where law is viewed as social action. On the same line of investigation, he points out that applied legal research (it is also called law reform research) is concerned with facilitating a future change in law or in its administration. Likewise, to him, pure legal research is carried out to produce wholesome theoretical knowledge about law, and fundamental agreed points of philosophy, morality, politics, and economics play a pivotal role in this research (Chynoweth, 2008). Empirical legal research is another type of legal research that is becoming popular in the legal fraternity (Davies, 2020). This research is concerned with using real-time data for drawing inferences (Epstein & Martin, 2014).

Similarly, comparative legal research is another type of legal research that compares the laws of one jurisdiction or legal family to the laws of another jurisdiction and family. This type of research has gained popularity among legal researchers (Smits, 2002). This approach or method is considered a new option to analyze law where a lot can be learnt from other disciplines and foreign legal orders (Eberle, 2009). Despite the growing interest of researchers in comparative legal studies, its definition, scope, approaches and methodologies is unclear. The present study intends to fill this gap by addressing the following four research questions. What is comparative law? What is its scope? What are the various approaches in comparative law? What may be the general methodology for comparative legal studies? The researchers have addressed these questions by deploying black letter research methods and authoritative writing on the subject have been consulted to address the questions. This article, other than introductory section, has five major sections. The second section discusses the meaning and scope of comparative law, and the third section deliberates the various approaches in comparative law. The fourth section discusses different methodologies or guidelines proposed by numerous researchers, then it offers an abstract methodological framework for comparative law researchers, and the last section concludes the study.

Comparative Law and its Scope

This section intends to address the first two research questions mentioned in the above section. This section discusses the definition, aims, objectives and scope of the comparative law.

There are numerous definitions of comparative law and the critical aspects of all these definitions converge to the points discussed in the definitions of comparative law by Rheinstein and Hage. Rheinstein, (1937) believes that comparative law is concerned with analyzing positive law in scientific manners and a researcher's analysis in this method is not limited to taxonomic or critical explanation or application of one or more legal systems (Rheinstein, 1937). Similarly, Hage (2014) argues that comparative law is concerned with comparing the laws of different jurisdictions, legal families, or legal traditions, to observe the similarities and dissimilarities between them (Hage, 201). However, it is necessary to keep two points in mind while defining comparative law. Firstly, comparative law does not mean systematically collecting information about another legal system (Watson, 1974). Secondly, comparative law does not require a researcher to condense information related to local or foreign legal systems but is concerned with comparing laws (Siems, 2007).

The above paragraph reveals important features of comparative law: the comparative law is concerned with comparison of positive laws; this comparison involves the scientific analysis of laws of different legal families, jurisdictions, legal systems or legal traditions; the scientific legal analysis is carried out to observe the similarities and dissimilarities between at least two separate legal systems or traditions and finally, and the scientific analysis of laws goes beyond the taxonomic or analytical description of laws. Consequently, these features trigger specific questions: what is the meaning of laws? What is the meaning of comparison? What is scientific analysis? What is the meaning of similarities and dissimilarities? What is the meaning of legal families, traditions and systems? Finally, what is the meaning of analysis of laws by going beyond taxonomic analysis? These questions must be addressed to understand the meaning of comparative law, and these are answered in the following paragraphs.

The term "laws" in comparative law refers to statutory laws, by laws, rules contained in constitutions, and legal doctrines developed by jurists. Sacco (1991) proposes that a researcher in comparative law must specify at the first step what rules he intends to compare; constitutional rules, statutory rules, judicial rule or rules emerging from legal doctrines (Sacco, 1991). It is an important question from where a researcher may find local or foreign law. It has been suggested that a researcher should start by acquainting himself with the whole legal systems and its sources of law to identify the laws intended to be compared. It has also been advised that the analyses of laws must start with the study of local laws and then the study of foreign laws (Rheinstein, 1968). Similarly, the term "comparison" in comparative law refers to comparing the similarities and dissimilarities in legal rules of at least two different legal families, legal traditions or jurisdictions. It is essential to point out that the legislative text of any type and case laws must be considered while observing the similarities and dissimilarities among various legal systems (Sacco, 1991). Likewise, the similarities and dissimilarities must be observed at multiple levels of analysis (like statutory analysis, constitutional analysis, or case law analysis) since two different legal systems may be similar at one level and different at the next level (Legrand, 1999). In addition, whether a researcher will focus on similarities or dissimilarities (or on both) among various rules of different legal systems depends upon the study's objective (Danneman, 2019). Likewise, the words "comparative law goes beyond the

taxonomic or analytical description of laws" means that a researcher may analyze legal rules by considering other social factors like historical perspective of legal rules, and economic, psychological, political and cultural context of specific legal rules (John, 1991). Legrand, (1996) believes that such context or perspective is significant to understand the hidden epistimological assumptions behind similarities and dissimilarities of different legal systems (Legrand, 1996).

After explaining the definition and ingredients of comparative law, it is also essential to distinguish it from other related research methods like legal history, legal philosophy, legal theory or sociology of law etc. Zweigert and Kötz (1998) point out that comparative law is an independent method and it is different from legal history, legal philosophy and sociology of law since these methods have their area, scope and methodology though these subjects intersect comparative law (Zweigert and Kötz, 1998). For instance, legal history pays attention to the past and not to present or future, though it mainly explains the present state of a particular law. This approach offers a method to examine law's evolution, development and working from internal and external viewpoints (Rabindra & Pathak, 2019, see also, Ishwara Bhat, 2020). Similarly, legal theory and philosophy strive to locate common denominators that are contradictory with the purpose of comparative law. Likewise, sociology of law is concerned with social engineering of law i.e. various factors which contribute in the development and origin of law (Cownie and Bradney, 2013).

It is also important to learn that for what purposes comparative law methodology can be deployed. Various researchers have highlighted numerous goals for which this method may be applied and these may be described in the following five points. First, comparative law may be used to find better law or improve legal rules, doctrines and concepts since the method involves critical analysis of various laws and this may result in concluding that which law may offer better solution to the same problem (Saleilles, 1911). It is essential to highlight that this is one of the assumptions of comparative law that a researcher must not affirm that which law is the best however; a researcher is justified in concluding that which law offer a better solution. Second, legal researchers use comparative law methods to compare and contrast two divergent legal systems (Simonnæs, 2013). Third, the objective of comparative law is the international unification of private laws, which is possible if various legal rules or laws belonging to different families or systems are compared (Marryman et all, 1994). Four, many research believe that comparative law is a mean of enhancing knowledge for better understanding of law (David and Brierley, 1985). Five, this is one of the objectives of comparative law to examine how a same problem is handled in various legal systems (Green, 2005).

Approaches in Comparative Law

This section intends to address the present study's third research question which has been mentioned in the introductory part. This section deliberates on the three major approaches in comparative legal studies i.e. functionalist, structural, and hermeneutical. The primary purpose of this section is to gain insight into these approaches and subsequently use it to suggest a general framework as methodology for researchers.

Functionalist Approach

Functionalist approach is ranked as the most dominant (Peters, & Schwenke, 2000), and productive approach in comparative legal studies (John Reitz, 1998). The fundamental assumption of this approach is that all the world's legal systems face similar problems, which are solved by similar solutions. It is very seldom that different legal systems provide different solutions for these problems (Zweigert et all., 1998).

Max Rheinstein (1987) is associated with the beginning of this approach. He believed that comparative legal studies must not concentrate only on the analysis of wordings of legal rules, their technical application in a particular legal system and their logical analysis. On the other hand, he added that a researcher of comparative law must examine the functions which various legal rules and institutions perform in a given legal system. To him, all the legal rules and institutions may justify their existence on three grounds. Firstly, what function has been assigned to these legal rules or institutions. Secondly, do these legal rules or institutions discharge the assigned functions effectively? Thirdly, is there any better rule which may perform these functions more effectively (Rheinstein, 1987)? To him, the functionalist approach pays attention to facts and not to legal rules or structure of legal institutions (Rheinstein, 1987). Consequently, different legal rules, norms, concepts, or institutions of different legal systems that perform the same functions can be compared in functional approach (W. J. Kamba, 1974). In addition, some analysts argue that comparative law is also concerned with analyzing the various solutions to same problems in different legal systems (Zweigert et al 1998). Another feature of functional approach is that it is carried out at two phases; the first phase of research is concerned with problem identification and the second phase is about solution identification (Whytock, 2009). It is vital to learn that when a researcher of comparative law may be justified in adopting functional approach. In this regard, Ralf Michaels (2019) suggests that functional approach may be adopted to understand law and legal institutions of various countries, to compare various legal systems, to identify the similarities in at least two different legal systems, to determine which law is better on a particular issue, to unify the laws, to criticize law and to analyze the effects (Ralf Michaels, 2006). It is also important to mention that functionalist approach is charged on the ground that it cannot take a holistic view of any legal system in terms of its structure and classification (Berthelot, 1990). The structural approach in comparative law is suitable to examine the structure and classification of legal rules and institutions and it is discussed in the following section.

Structural Approach

Structural approach is the second scheme of intelligibility in comparative law which involves structural thinking about legal rules and institutions. This approach requires a researcher to look at a legal system from outsider's and insider's view. To view a legal system from an outsider's perspective, a researcher first constructs a legal system structure which will differentiate legal system from non-legal system. After that, the researcher will ascertain the features of foreign legal system and compare these features with the similar features of indigenous legal system. This approach involves the analyses of legal structure, norm structure, and rights and structural relations and these are briefly discussed in the following paragraphs

Legal Structure

Samuel (2014) points out that foundation of the study of institutional structure was set out by Gaius who believed that all laws deal with persons, things or actions. He added that these three elements can create two different but interrelated structures. First, these elements can form hierarchy of legal categories. Second, they can act as the institutional focal points for a series of relations which interrelate as a system (Samuel, 2014).

The first structure is denominated as taxonomical and it is used to create categories, sub-categories and sub-sub-categories of laws. For instance, law is divided into three categories: law of person, law of things and law of actions. Similarly, law of person is sub-divided into legal personality and status; law of things is sub-divided into law of property and the law of obligation. Property law is divided into possession, ownership and rights in another's property. Likewise, law of obligation is sub-divided into contracts, quasi-contracts, delicts and quasi-delicts. Finally, law of actions (remedies) can be sub-divided into real action and personal actions (the former is meant to recover the property or assertion of a property right whereas the latter is intended to enforce a personal obligation). These categories and sub-subcategories in collective form constitute law's hierarchical and analytical structure (Samuel, 2014).

The above structural pattern is crucial since it is not only a classification but also a system. This structure can be used as a conceptual framework to organize and analyze the legal or institutional structure (Samuel, 2014). In this institutional structure, both actual elements and relationships are important. For instance, the relationship between person and thing creates ownership or possession, the relation between persons create obligation between them, and relationship between person and action (remedy) form the requirement that a person must have a legitimate interest before he brings a claim before the court (Samuel, 2014). Gaius scheme is not as such a validating normative system. It is a model designed to represent the empirical world of persons, things and physical legal facilities (courts, judges and actions) and to describe and define legally these institutions and the relations between them (Samuel, 2014).

Norm Structure

Although the legal-structure approach as stated above may be used to examine legal rules, it cannot demonstrate or examine the legal justification behind the legal rules. Tropper (2003) points out that the legal rules are like that of units which do not constitute the basis of law in isolation rather the various legal norms jointly form the basis of law. He explained that all the legal norms constitute the basis of law because these are linked with each other in a way that one legal norm is validated by another legal norm (Troper, 2003). On the other hand, the norm-structure approach in comparative law can examine the validating force behind the legal rules. It is important to learn how a researcher may explore or analyze the validating force behind various legal norms. In this respect, Samuel (2014) suggested to use Kelson's structure of norms to study the structure of norms of legal rules. Kelson argued that norm is a metaphysical ought and is more general and abstract than legal rules. He said that all forms of law like legislative text, court decisions, formation of contract or wills etc. are the norms and the basic elements of law that deal with human actions. Kelsen's model associates one norm to another in a way that permits law to be grasped only as an abstract and purely intellectual object. It affords an epistemology of legal validity (Samuel, 2014). Similarly, to Troper (2003), the

normative system of a country defines the legal norms (Troper, 2003). He illustrated this point by giving an example of No Parking notice. He explained that this notice is at the lowest level of the hierarchy of norms. The validity of this notice may be evaluated by examining the other norms giving it legitimacy. For instance, first of all it should be examined that under what by-laws the notice has been affixed then under what law (like legislative text) the by-laws were passed then under what law the legislative text was enacted. He added that this regression continues until one comes to the basic constitutional norm (the Grundnorm) which validates the whole legal system.

Rights and Structural Relations

The third strain of structuralism in comparative law is the right and obligation structure. An American jurist Wesley Hohfeld (1966) proposed this structure who pointed out that it was a wrong presumption that all legal relations may be expressed by classifying them into rights and duties for analyzing complicated legal interests (Hohfeld, 1966). Consequently, he introduced a structure to understand the relationship between rights, duties and obligations that Harry Lawson summarized. Lawson (1977) believed that all legal relations could be reduced to eight types which could be arranged in two groups of four. Each of these groups has its correlative and its opposite, and it is this arrangement of correlatives and opposites which inevitably reduces the number of relations in each group to four (Lawson, 1977). To Samuel (2014), Hohfeld intended to apply his scheme to identify rights in relations to duties and not rights about persons and things. He further pointed out that his shift was on person-person model and not on person-thing institutional structure (Samuel, 2014).

The three strains discussed above may be a handy tool for comparative legal studies since these approaches offer an effective lens to examine various elements of national and foreign legal system. It is thought that these approaches will enable a researcher to discover relations between person, things and legal remedies in national or foreign legal system by knowing the meaning of person, thing and legal remedy and the relationship between them (Samuel, 2014). However, the structural approach suffers from two limitations; there are chances that a researcher may unintentionally use the system-elements of his indigenous legal structure while examining the foreign system-element. Secondly, a researcher may find it difficult to determine the structure and nature of the system itself (Samuel, 2014).

Hermeneutical Approach

The third major approach in comparative law is hermeneutical. It is important to point out that functionalist approach is concerned with comparing the functions which various legal rules discharge in various countries, and the structural approach is concerned with examining the structure of legal rules and institutions in different legal systems. These approaches fail to examine the culture and mentality of the society behind the legal rules or institutions. On the other hand, hermeneutical approach in comparative law is concerned with identifying the mentality behind legal rules and institutions. According to Pierre Legrand (2009), this approach is concerned with discovering the culture and mentality of the society behind legal rules which are just signifier of the mentality and culture of a society (Pierre Legrand, 2009). He added that this approach is a kind of explanation but it is different from simple interpretation in a sense that it emphasizes situated character of interpreter and situated character of the text. It is also thought that this approach is founded on the assumption that objective interpretation of an object is impossible (Legrand, 2009). He argued that it should be presumed that foreign and indigenous systems are

different. This approach aims at deconstructing law to discover its working level which is necessary to make comparisons and meaningful analysis of law (Monateri, 1997). This approach compels a researcher to strive for discovering the cultural, etymological and ethical beliefs of legal rules (Brand, 2007). It has been suggested that a researcher should first establish a linguistic framework (to understand foreign law) and then describe the culture or mentality especially legal culture behind the rules under examination (Brand, 2007). Samuel (2014) suggests that a researcher should explain or interpret the positive legal rules by going beyond such rules and by investigating various components of complicated culture of foreign country (Samuel, 2014). However, a researcher, as suggested by Legrand, should not claim that one legal system is better than another. He adds that a researcher must show respect for the foreign legal system how much strange and different it is since there is a rationality behind such strange legal rules of a foreign country (Samuel, 2014). It has been suggested that a researcher of comparative law must go beyond the written or unwritten law which are signifier of complicated foreign culture. In addition, this approach in comparative law strives to discover the meaning of law and not the cause of law and in this respect, it has been pointed out that culture is not the cause of law, on the other hand, law is constituted by institutionalized human being in foreign culture (Samuel, 2014).

Methodology for Comparative Legal Studies

This section addresses the fourth research question of the present study which was related to the methodology of comparative legal studies. This section first discusses the methodological guide lines given by Reitz (1998), Eberle (2009), and Samuel (2014) and then suggests a general methodological framework for the researchers. It is significant to clarify the meaning of research methods and research methodology; research methods refer to a route to follow to achieve a result; and methodology means scientific study of these methods (Bergel 2001). It is important to mention that there is no consensus among researchers on general framework of methodology for comparative legal studies (Örücü 2007). However, there must be rigorous guidelines regarding methodology if comparative law is to be viewed as a scientific method of legal research. This is the prime aim of this section to set out a comprehensive, dynamic and objective methodology for comparative legal studies.

Reitz (1998) proposed methodological guidelines consist of nine suggestions. First, he advises researchers to make an explicit comparison of similarities and dissimilarities between two or more than two legal systems instead of leaving the matters of comparison to reader (Reitz, 1998). Second, he advised to consider the object of comparison in various legal systems and similarities and dissimilarities between them. He added that researchers must pay attention to the functions which various legal rules performed in different legal systems to notice similarities and dissimilarities between them. He also advised identifying functional equivalence of indigenous legal rules with a foreign legal system by examining the working of the legal system as a whole (Reitz, 1998). Third, he suggested considering the suitability of comparative law methods. He pointed out that it is suitable for such legal studies whose aim was to identify the distinctive features of different legal systems and how they dealt with the same subjects (Reitz, 1998). Four, he advised to develop general categories of concepts which discharge the same functions in different legal systems after observing similarities and dissimilarities among legal rules (Reitz, 1998). Five, he advised researchers to pay attention towards putting forwards the reasons of similarities and dissimilarities and their importance. He suggested that these aspects may be explored by looking at the difference in political and economic systems and

their historical traditions (Reitz, 1998). Six, he suggested that legal rule of a foreign legal system may be effectively analyzed by using the same conceptual framework which a researcher of that foreign legal system adopted, considering all the sources of law which a researcher of that legal system explored, taking into account the gap between theoretical and practical knowledge and considering the volume of available knowledge about foreign legal system (Reitz, 1998). Seven, he advised researchers to collect maximum information about the culture of foreign legal system. He suggested that a researcher must have a dab hand at the language of that foreign legal system which would enable him to gather information about legal rules, doctrines, concepts, history, culture and communicating with the lawyers of that country (Reitz, 1998). Eight, he advised researcher to organize their study in sections where each section must contain joint discussion on similarities and dissimilarities of legal systems under study. He suggested discussing laws of legal systems first then similarities and then dissimilarities among them (Reitz, 1998). Last, he advised researcher to show respect to foreign legal system how much bizarre and different it was from indigenous legal system. However, he pointed out that a researcher may adopt a critical approach and may criticize the various legal rules or traditions of foreign legal system (Reitz, 1998).

Eberle (2009) proposed the following four-step methodology on the same line of inquiry. At the first step, he suggested learning the necessary skills to make comparisons of various objects to evaluate law clearly, objectively and impartially. He advised that a researcher must learn critical reasoning skills and how to apply them in a scientific, objective and impartial way. He recommended that a researcher must examine local laws and should explore and explain them by paying attention to underlying forces. On the other hand, as he suggested, a researcher must approach a foreign legal system with an anthropologist's or archeologist's mindset to unveil underlying forces behind foreign legal rules. He advised to explore political, historical, economic, and linguistic backgrounds that structure and run the legal system. After gaining the information of foreign culture, a researcher must approach the legal rules in the context of foreign culture and then he must view the legal rules from an outsider's perspective while maintaining impartiality, objectivity and distancing himself from cultural bias of own or foreign legal systems. After that, he suggested identifying meaning of foreign concepts in its cultural context and then he must interpret these meaning in other legal culture. He believed that the socio-philosophic context will enable a researcher to attain full understanding of law (Eberle, 2009). The second step of his methodology involves taking the external view of law to understand the meaning of legal rules of indigenous or foreign legal systems. The external view simply requires a researcher to study legal rules incorporated in constitutions, statutes, codes, regulations, judicial decisions or any other sources of law and then understand their meaning (Eberle, 2009). He points out that to discover the similarities and dissimilarities among various legal rules of two or more than two legal systems, a researcher must comprehend the connotation, content and the use of legal rules. He believed that such understanding is possible if a researcher not only understand their lexical meaning but also understand the meaning in the context of judicial decisions, legislative text and other legal norms. After that, he advised to pay attention to the similarities between legal rules of indigenous and foreign legal system by taking into account the meaning of similarity, its impact, basis, nature, level, and context. After that, a researcher must identify the dissimilarities in the similar way (Eberle, 2009). He advised researchers to examine the reasons and significance of similarities and dissimilarities in cultural context between legal rules under study (Eberle, 2009).

At the third step, he advised researchers to take internal view of law i.e. viewing the law in action or how a particular law is being operated in a specific legal system (step 2 is concerned with law in books). He argues that the internal view of law can be taken by probing custom, history, religion, ethics, geography, language, philosophy, interpretation, or translation (Eberle, 2009). He pointed out that a researcher must see that under what law, a legal rule is run, how these rules are functioning, how these rules influence and form the culture and how much effective they are. This activity will enable a researcher to understand the reason of formation of rules in a particular way, the cultural disposition of these rules, composition of culture and the influence of these rules on the culture and how other elements of law influence the legal rules (Eberle, 2009). He argued that a researcher is not only studying law but also legal culture which will enable him to get complete picture and true understanding of law (Eberle, 2009). The Fourth step of his methodology is concerned with reporting the findings of study. While reporting, he advised to pay attention towards indigenous and foreign legal rules under examination to understand their cultural context, their comparative perspective, their effectiveness, the position of indigenous legal rules viz a viz foreign rules and any lesson which may be learnt from foreign rules to improve the indigenous legal rules (Eberle, 2009).

Similarly, Samuel's (2014) methodology consists of the following ten steps. The first step requires a researcher to clarify the meaning of "comparison" and "law" in a comparative research project. He believed that this clarification will help devising a methodological process to decide what to compare (Samuel, 2014). The second step is related to deciding level of comparison .i.e. whether a study would be carried out at macro or micro level. The macro level is concerned with creating categories of indigenous legal system which has resulted in the creation of legal families, legal traditions and legal systems etc. (Samuel, 2014). The third step involves the decision to choose presumption of similarities or dissimilarities between legal systems under study (Samuel, 2014). The fourth step is associated with the genealogical and analogical comparison with respect to macro and micro analysis of legal systems whether they belong to the same family or tradition of law. He pointed out that sometimes certain legal concepts in ancestor system are different from the child system but these may be related with the ancestor system by way of analogy which is important for a researcher in comparative law (Samuel, 2014). The fifth step requires a researcher to decide whether he will take insider's or outsider's view of laws under examination. He advised that a researcher should take outsider's view since it will enable him to understand law from other's mentality and keep his personal bias away from analysis (Samuel, 2014). The sixth step concerns the decision to adopt a method of intelligibility to understand various laws under study. He believed that a researcher may follow structural, functionalist or hermeneutical approach however, he advised to reconcile functionalist approach with structural approach to examine legal systems (Samuel, 2014). The seventh step concerns the decision about what to study; legal rules or legal norms. He suggested that a researcher must analyze rules and norms and look into methods, attitudes, concepts, values, factual situations and institutions. The ninth step concerns factual analysis and involves deciding whether a researcher will adopt a holistic or individualistic approach to analyze facts. This step is important to understand the legal mentalities and is significant for a researcher investigating ways of legal reasoning, mentalities and how facts are envisaged in various legal systems. At this step, a researcher must decide whether to focus on individual acts or activities as a whole (Samuel, 2014). The last step is associated with the decision related to the choice between actual and virtual facts. This step is about the law question and not the comparison question

since the researcher is engaged in looking at how law incorporates facts into its domain. The researcher is to examine whether a legal system offers an abstract framework to look at the fact or it provides a specific framework while considering age, gender or intention etc. of specific person. At this step, a researcher examines how legal fraternity in two legal systems creates virtual facts when problems arise from actual facts (Samuel, 2014).

The methodologies discussed above offer useful insight into how to carry out comparative studies. However, these are silent regarding setting the aims and objective, coining research questions and how to find similarities and dissimilarities between legal rules. While keeping in view the discussion in the forgoing sections, the following methodology consisting of six steps is suggested.

At the first step, it is suggested that a researcher must identify the aims and objectives the study which will bring clarity in research projects. A researcher, at this step, will have to decide whether he wants to carry out the research to improve existing legal framework or to understand the laws or to unify the laws etc. At the second step, it is suggested that a researcher must coin precise, clear, signaled and well directed research questions. In addition, one research question must indicate one area of investigation. This step is very significant as the research questions will subsequently determine the level and depth of analysis. Moreover, the research questions must indicate the object of study i.e. by laws, statutory laws, constitutional laws, judicial decisions doctrines, concept, institutions or legal or cultural mind set. At the third step, it is suggested that a researcher should select a suitable approach to address the research questions. A researcher may follow structural, functionalist or hermeneutical approach however; he may reconcile functionalist approach with structural approach to examine legal systems while keeping in view the objectives and research questions of the research project. At the fourth step, it is suggested that a researcher should collect data which may be empirical and non-empirical. It is advised that the researcher must collect data from indigenous legal system first and then from foreign legal system. It is important to point out that a researcher should be familiar with the language, translation skills and sources of law of the countries or legal systems under study. At the fifth step, it is suggested that a researcher must analyze the collected data. It is recommended that a researcher should take outsider's view of the laws under examination which will enable him to analyze the laws objectively. It is further suggested that a researcher must identify similarities and dissimilarities between the laws under study in the context of judicial decisions, legislative text and other legal norms. In addition, a researcher should be attentive to the meaning of similarity and dissimilarity, their impact, basis, nature, level, and context. Likewise, a researcher must also pay attention to the functions which various legal rules performed in different legal systems to notice similarities and dissimilarities between them. After that, a researcher should develop general categories of concepts which discharge the same functions in different legal systems. After identifying the similarities and dissimilarities between laws under study, it is suggested that a researcher should understand the reasons of these similarities and dissimilarities by probing customs, history, religion, ethics, geography, language, political system, economic system and the philosophy behind the legal rules under examination. At the sixth step, it is suggested that a researcher should report his findings. He should organize his findings in sections where each section should describe the laws of indigenous and foreign legal systems first, then similarities, then dissimilarities and then reasons of similarities and dissimilarities among them.

Conclusions and Recommendations

The conclusion of the present study may be described in the following eight points. First, comparative law is concerned with analyzing positive law in scientific manners by going beyond taxonomic or critical explanation or application of legal systems. Second, comparative law deals with comparing laws of different jurisdictions, legal families, or legal traditions. Third, comparative law is concerned with observing similarities and dissimilarities between legal systems. Four, the words laws refers to constitutions, statutory laws, by laws, and legal doctrines. Five, the words "comparison" mean comparing similarities and dissimilarities between different legal families, legal traditions or jurisdictions. Six, comparative law encourages researchers to examine laws by going beyond their literal structure and to analyze historical, economic, psychological, political and cultural context of specific legal rules. Seven, there are three major approaches in comparative law; functionalist, structural, and hermeneutical. In functionalist approach, different legal rules, norms, concepts, or institutions of different legal systems that perform the same functions are compared. Similarly, structural approach examines legal structure, norm structure, and rights and obligation structure. On the other hand, hermeneutical approach involves comparing the cultural and legal mentality behind the laws. Eight, there must be rigorous guidelines regarding methodology if comparative law is to be viewed as a scientific method of legal research.

References

2009 Le droit comparé (Presses Universitaires de France, 3rd edn).

Bergel, J. L. (2001). *Méthodologie juridique*. Presses universitaires de France.

Berthelot, J. M. (1998). L'intelligence du social. (Presses Universitaires de France).

Bhat, P.I. (2020). Historical Legal Research: Implications and Applications in *Ideas and Methods in Legal Research.* Oxford University Press.

Bhattacherjee, A. (2012). Social science research: Principles, methods, and practices.

Brand, O. (2006). Conceptual comparisons: towards a coherent methodology of comparative legal studies. *Brook. J. Int'l L.*, *32*, 405.

Chynoweth, P. (2008). Legal research. *Advanced research methods in the built environment*, *1*.

Cownie, F., & Bradney, A. (2013). Socio-legal studies: a challenge to the doctrinal approach. In *Research methods in law*. Routledge.

Curran, V. G. (1998). Culturan Immersion, Difference and Categories in US Comparative Law. *Am. j. Comp. l.*, *46*, 43.

Dannemann, G. (2019). Comparative law: study of similarities or differences?

David, René and John E.C. Brierley (1985), Major Legal Systems in the World Today, London: Stevens & Sons.

Davies, G. (2020). The Relationship between Empirical Legal Studies and Doctrinal Legal Research. *Erasmus L. Rev.*, *13*, 3. Page?? (03 is page number)

Eberle, E. J. (2009). The method and role of comparative law. *Wash. U. Global Stud. L. Rev.*, *8*, 451.

Epstein, L., & Martin, A. D. (2014). *An introduction to empirical legal research*. Oxford University Press.

Fedtke, J. (2012). Legal transplants. In *Elgar Encyclopedia of Comparative Law, Second Edition*. Edward Elgar Publishing.

Graziadei, M. (2006). Comparative law as the study of transplants and receptions. *The Oxford handbook of comparative law*.

Hage, J. (2014). Comparative law as method and the method of comparative law. *Maastricht European Private Law Institute Working Paper*, (2014/11).

Hohfeld, W (1919) Fundamental Legal Conceptions (Yale University Press; reprint, 1966).

John Law' Introduction: Monsters, Machines and Sociotechnical Relations' in Id (ed) A Sociology of Monsters [:I Essays on Power, Techlogy and Domination (London, 199 1).

Kamba, W. J. (1974). Comparative law: A theoretical framework. *International & Comparative Law Quarterly*, *23*(3), 485-519.

Law, J. (1990). Introduction: monsters, machines and sociotechnical relations. *The Sociological Review*, *38*(1_suppl), 1-23.

Lawson, F. H. (1977). *Many laws* (Vol. 1). North Holland.

Legrand, P. (1996). How to compare now. *Legal Studies*, *16*(2), 232-242.

Merryman, J. H., Clark, D. S., & Haley, J. O. (1994). Introduction to comparative law. In J. H Merryman, D. S. Clark, & J. O. Haley (Eds.), The civil law tradition: Europe, Latin America, and East Asia. Charlottesville, VA: Michie Comp.

Mertens, D. M. (2019). *Research and evaluation in education and psychology: Integrating diversity with quantitative, qualitative, and mixed methods*. Sage publications.

Michaels, R. (2005). The functional method of comparative law in *The Oxford Handbook of Comparative Law*, eds. Mathias, R & Reinhard, Z. Oxford University Press.

Monateri, P. G. (1997). Everybody's Talking: The Future of Comparative Law. *Hastings Int'l & Comp. L. Rev.*, *21*, 825.

Naidoo, N. (2011). What is research? A conceptual understanding. *African Journal of Emergency Medicine*, *1*(1), 47-48.

Örücü, E., & Nelken, D. (Eds.). (2007). *Comparative law: A handbook*. Bloomsbury Publishing.

Pathak, R. (2019). Historical Approach to Legal Research. *Legal Research and Methodology: Perspectives, Process and Practice*.

Pearson, K. (1900). *The grammar of science*. Adam and Charles Black.

Peters, A., & Schwenke, H. (2000). Comparative law beyond post-modernism. *International & Comparative Law Quarterly*, *49*(4), 800-834.

Reimann, M., & Zimmermann, R. (Eds.). (2019). *The Oxford handbook of comparative law*. Oxford University Press.

Reitz, J. C. (1998). How to do comparative law. *Am. j. Comp. L.*, *46*, 617.

Rheinstein, M. (1937). Teaching comparative law. *U. Chi. L. Rev.*, *5*, 615.

Rheinstein, M. (1968). Comparative Law-Its Functions, Methods and Usages. *Ark. L. Rev.*, *22*, 415.

Sacco, R. (1991). Legal formants: a dynamic approach to comparative law (Installment I of II). *The American Journal of Comparative Law*, *39*(1), 1-34.

Samuel, G. (2014). *An introduction to comparative law theory and method* (Vol. 11). Bloomsbury Publishing.

Sefton-Green, R. (Ed.). (2005). *Mistake, fraud and duties to inform in European contract law*. Cambridge university press.

Simonnæs, I. (2013). Legal translation and" traditional" comparative law-Similarities and differences.

Smits, J. (2019). Comparative law and its influence on national legal systems. In *The Oxford Handbook of Comparative Law* (pp. 502-523). Oxford University Press.

Smits, J. M. (2002). *The making of European private law: toward a Ius Commune Europaeum as a mixed legal system*. Intersentia nv.

Troper, M (2003) 'Normativisme', in Alland and Rials (2003) 1074.

Van Hoecke, M. (2006). Legal Cultures, Legal Traditions and Comparative Law. *R & R*, *35*, 331-334.

Watson, A. (1974). Legal Transplants (Scottish Academic Press).

Whytock, C. A. (2009). Legal origins, functionalism, and the future of comparative law. *BYU L. Rev.*, 1879.

William Ewald, The Jurisprudential Approach to Comparative Law: A Field Guide to "Rats," 46 AM. *J. COMP. L.* 701, 704–05 (1998).

Zweigert, K., Kötz, H., Weir, T., Kötz, H., & Weir, T. (1998). *Introduction to comparative law* (Vol. 3). Oxford: Clarendon press.