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RELEVANCE OF COMPARATIVE RESEARCH IN LAW

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Abstract
Comparative legal research is gaining a lot of attention in the legal scholarly work. Comparative legal research emanates comparative research methods which is the study of more than two or more macro-level units with the aim of explaining the differences and similarities referred to as 'comparability'. Esser and Vliegenthart assert, a key issue in comparative empirical research is to ensure equivalence, that is, the ability to validly collect data that are indeed comparable between different contexts and to avoid biases in measurement, instrument and samplings. Paris points out that, the research in a comparative method, while going through different comparative analysis, has to set her own parameters of research within the theoretical framework provided in the comparative law literature and has to justify the direction she chooses to give. Mill says that, the underlying goal of comparative analysis is to search for similarities and variance. According to Wilson, by looking overseas, by looking at the other legal systems, it has been hoped to benefit the National legal system of the observer, offering suggestions for future developments providing warnings of future difficulties.

Introduction

The major component of comparative legal research is case selection. Case selection and sampling in comparative legal research in closely related to the concept of 'comparability' and constructive equivalence. A researcher must have a purely contextual approach. This may involve considering the historical and socio-economic context of the subjects under study to provide a better understanding.

Hoecke points out six methods of comparative research: the functional method, the structural method, the analytical method, the law-in-context method, the historical method and the common core e method.

Regarding what has to be compared in a comparative legal research is, in the nineteenth century there was comparison between rules in different societies. Later on more attention was paid to judicial decisions of and the way legal problems were solved in practice. Many researchers also gave importance to taking into account socio-economic and historical context of the law. The different methods discussed here after are not mutually exclusive. It is possible even to compare all of them in one research. The functional method actually looks at the actual social problem and the way it is solved in different jurisdictions. The focus is on the social problem and the actual result of the legal approach to that problem. The idea behind the functional method is to look the way practical problems are solved conflict of interest are dealt with in different societies according to different legal systems. Many social problems such as accidents, family problems, theft, murder, and quarrel between neighbors are found mostly in all societies. Legal concepts, legal rules and legal procedure s may differ from different societies. The functional methods always looks for functional equivalents in different societies. The structural method focuses on the framework of the law or of the elements reconstructed through an analytical approach. It is not the structure of each legal system but the way of looking at it. The structural method defines comparative research in a more structures form of comparision.Differnces between legal systems at the level of concrete rules becomes irrelevant if they share similarities. One specific criterion or structure may be a deciding factor about the entire constitutionality. Structural analysis may be made in many different ways on the basis of large distinction and varieties.

The analytical method is analyzing concepts and rules in different legal systems in such a way that common parts and differences are detected. In the analytical method, we can see the analysis of different concepts such as right, duty, privilege etc. by looking at the deeper level, we can see that the concepts differently appear in different societies. The content of a legal concept is defined by the actually rules governing the field covered by the concept, within a particular period of time. However a minor differences may come when

we thoroughly analysis the concepts in an analytical way. The most ambitious attempt to determine the legal grammar of legal systems can be done by the analytical method.

The law in context method cannot be isolated from other methods. It is complementary and interdependent with the other methods the method defined the context as to which social problem is solved by which kind of legal procedure in different legal systems and societies have reached to divergent methods to come to an end. Hence every method should adopt the law-in-context method. Sometimes research may contain interdisciplinary approach considering various fields, there law-in-context method will guide in a right manner.

The historical method will always be a necessary part of the methods used for understanding the differences and similarities among legal systems and for determining their degree of belonging to a deeply rooted society. In the historical method, historical comparisons may not only explain the origin and reasons for the law as it is today in that society, it may reveal similar approaches to law we find in one legal system have been present in the other in the past whereas the current laws are different today.

By the end of nineteenth century and the early of twenth century, under the influence of positive scientist, comparative lawyers wanted to find out which legal concepts, legal rules and legal institutions all societies had in common. This ambition led to common core method. Levels of comparison: levels of comparison may be in different perspectives. It may depend on how laws are made and how laws are practiced geographically.

Macro and micro level: the most classical level of comparison is distinction between macro and micro level. Comparing legal systems of concrete rules and legal solutions to social problems.

Underlying general and professional legal cultures : this includes deeper levels of comparison between legal culture, legal augmentation, , judicial decision making , style of legal writing, diverging approaches to legal problems , statutory interpretations , the role of legal doctrines etc.

Law in action and law in the books: in this approach comparison is limited to judicial decisions. While doing comparative research, rules and laws as well as judicial decisions relating to such laws are also taken into consideration.

Doctrinal framework and legal cultural: in the usual context, the doctrines which are framed are in accordance with the legal culture existing in the particular community. Hence the legal doctrines which a law adopted reflects the cultural mindset of the society.

Advantages of comparative research with reference to legal field: ‘

In the contemporary era, the comparative legal research has gained higher level of importance. We see comparative approach is used by various academicians, researchers, judges, parliamentary committees etc. By comparing the features of one legal system with the other, the researcher may crack new policies where the researcher may come up with good solutions to various legal problems. While conducting comparative research, the researcher may stumble up an unfavorable feature of the law in his or her own country. By studying and analyzing the similar law in another country the researcher is more likely to come up with a beneficial answer to this problem. The researcher can also understand and gain knowledge of International policies which helps to build up international relationships. Especially when it comes to trade and commerce at an international platform. Thus an advanced legal research is ensured by comparative legal research. The researcher likes to read through international periodicals, paperwork, tries and conventions when studying international law.

Disadvantages; as regards the comparative legal research one can be biased regarding the sample selection. While conducting comparative legal study, a variety of practical obstacles may arise. These obstacles include non-accessibility of information, country privacy laws prohibiting sharing of information, the researchers’ inability to understand the language of material available. The lacking of translated documents, the absences of treaties between two countries.

Conclusion:

It is suggested that to reach at a specific outcome, the researcher must follow comparative research. It helps the researcher to understand a particular concept in a national as well as international perspective. It further helps the researcher to conduct effective research for better knowledge of principles of law

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