

A CRITICAL ANALYSIS OF UNDERLYING CONCEPTS OF DOCTRINAL RESEARCH

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ABSTRACT

Through this paper the author aims to critically analyze the underlying concepts of Doctrinal research, also known as doctrinal legal research. The author makes an attempt at explaining the methodologies adopted by researches, academicians, judges, jurors, attorneys and others whilst performing doctrinal legal research and also highlights the significance and aims of doctrinal legal research. This method of research has been extensively used to provide legal reasoning to legal issues. It also involves crucial examination of data as a part of the process. The research also highlights the historical existence of doctrinal legal research. As this research is an unbiased research, it also highlights the advantages and disadvantages of doctrinal legal research.

INTRODUCTION

What is Research?

A systematic investigation of problems and of matters concerned with law such as codes, acts, etcⁱ. Legal Research means a forensic investigation of legal issues and analysing legal problems with a solution based approach. We know that legal field is an ocean and legal research involves diving into the legal ocean and coming out of it with a comprehensive conclusion. Legal research can be classified into doctrinal and non- doctrinal research.

Meaning of Doctrinal Research

Doctrinal Research can be bifurcated into two parts ‘doctrine’ and ‘research’. Doctrinederives its essence from a Latin word ‘*doctrina*’ which means to learn which means to read, understand or teachⁱⁱ.The term doctrine essentially covers everything under the legal umbrella to rules, precedents and statutes. Doctrines can be abstract binding or non-binding. The term research derives its essence from a French word ‘*recherche*’ⁱⁱⁱ which means detailed search on a subject matter. Both the terms when read together forms Doctrinal Research, which is a research method known as “*normal judicial research*”^{iv}. It is also referred to as Doctrinal Legal Research. Doctrinal legal Research involves examination of legal statues or rules resulting in the formation of legal ‘doctrines’. The concept of Doctrinal Research requires an in depth analysis of legal provisions and tenets of the authorities.

Ian Dobinson and Francis John have said, Doctrinal Legal Research can be “defined in simple terms as research which asks what the law is in particular area. It is concerned with analysis of legal doctrine and how it has been developed and applied. This type of research is also known as pure theoretical research. It consists of simple research directing and finding a specific statement of the law or a complex or in depth analysis of legal reasoning”^v.

Paul Chynoweth states that doctrinal legal research is concerned with the formulation legal “doctrines” through analysis of legal rules.^{vi} He establishes, legal doctrine makes rules unambiguous and gives a rational structure to rules for a better understanding. Doctrine makes application of those rules a hassle free job. He also explains that a doctrine alone cannot provide a complete statement of law. It must be read with the relevant rules or provisions which are applicable to the situation and in accordance with the facts of the case.^{vii}

From the above mentioned definitions it can be deduced that doctrinal legal research is a

comprehensive and analytical finding of statutes, precedents and authoritative material on a certain legal issue. The dynamic nature of law is something which needs to be taken into account. Constantly new findings are coming, replacing the older one which ultimately becomes obsolete. This is where doctrinal legal research plays an important role and helps the society discover new findings.

HISTORICAL SIGNIFICANCE

Doctrinal research is underpinned by positivism and a view of the world where the law is fixed, neutral and objective.^{viii} The method doctrinal legal research derives its meaning from positivist or analytical school of law. It is an epistemological concept which does not associate itself with people or society.^{ix} The doctrinal legal research is based on theory of knowledge and distinction between justified belief and opinion. The rise of Doctrinal legal research began around nineteenth and twentieth century and during the same time emergence of common law was seen. The doctrinal method lies at the basis of common law.^x Initially in the nineteenth century, law itself was not established as an academic discipline in the common law world.^{xi} During the same time law entered the academic scenario and its emergence was initially seen in United Kingdom. All the educational institution recognized doctrinal research as a go to method for legal research. In 1980's countries like Australia and Canada also adopted doctrinal legal research as a main method for legal research. In the 1980s, an Australian professor Dennis Pearce described 'doctrinal' research as 'research oriented and 'theoretical' research in its report while reviewing research practices in Australia.^{xii}

OBJECTIVES

The relevance of doctrinal legal research can be understood by realizing the aims and objectives of the same. Following points postulate the aims and objectives of doctrinal legal research.

1. To formulate new ideas, doctrine and concepts for the purpose of building, applying and assessing knowledge to contemporary legal issues.
2. Provide clarity, consistency, accuracy and correctness.

3. To discover the purpose of existing laws and policies.
4. To provide a better understanding legal statues and provisions.

SALIENT FEATURES

5. The research is essentially related to analysis of legal proposals and legal issues.
6. Main source of data for a doctrinal author are appellate courts and traditional theories.
7. The research is mainly concerned with books, texts and documents.
8. The focal point of doctrinal legal search is to answer question based on conclusions drawn from theoretical research.

DOCTRINAL RESEARCH METHODOLOGY

Doctrinal legal research is often referred to as ‘Library-based analysis’ which is commonly used by researchers and jurists. It is an established fact that doctrinal legal research is a theory based research which either includes basic research which pinpoints a specific legal argument or legal study with more rational research. The first and foremost thing is to fix a proposition followed by forensic analysis of the problem in hand and examining the legal issues which includes extensive reading on the subject matter using sources. These sources are categorized into two:

- Primary sources - It includes precedents, statutes and legislations.
- Secondary sources - It includes books, journals, articles and encyclopedias.

The essentials to doctrinal or library based research are rational responses to a specific legal issues which can be corroborated. A pure doctrinal approach is not concerned with the ramification of law, but only analyze law as a written set of rules. It includes systematic inspection of data to identify the correct answer.

WORLD WIDE DEBATE ON METHODOLOGY

In the nineteenth and twentieth century lawyers, judges and jurists had widely used doctrinal research as a systematic means of legal. As a result of which, doctrinal research is therefore established as the traditional genre of research in legal field. The objective of doctrinal researchers was to add perfection to legal contents and issues, law was not functioning perfectly in various social contexts. This realization resulted in the emergence of a new research approach in second half of the twentieth century – socio-legal research – which was only concerned with the study about correlation of law with numerous facets of society.

Study of law in isolation cannot always contribute in establishing and institutionalizing validity of law for human society. Due to which, new approach of examining law with socio-legal view was seen in the international legal research arena. Since then, arguments on use and prevalence of methodology in legal research are constantly taking place as a periodic phenomenon in the academic world.

There is a discussion about the methodology in legal research in both Europe and the United States. Multidisciplinarians and doctrinalists have contrasting views on actual nature of legal scholarship'.^{xiii} Nonetheless, socio-legal research finds its footing based on the outcomes of doctrinal legal research. Socio-legal research is hand in glove with doctrinal research in the evolution of pragmatic law. Gestel and Miclitz has stated the relationship between doctrinal and non-doctrinal empirical research as under:

It is just as impossible to undertake good multidisciplinary or empirical research without a proper understanding of legal doctrine as it is to conduct solid doctrinal research with at least some knowledge of facts and fact finding. One needs this understanding, not in the last place, in order to be able to raise the right questions without making a mockery of law and legal theory. If the opposite were true, things would be a lot easier and there would probably not have been such a long history of frictions between legal formalism, naturalism and (new) legal realism in the U.S. and in Europe.^{xiv}

ADVANTAGES OF DOCTRINAL LEGAL RESEARCH

- Doctrinal Research is less time consuming.
- Judges and attorneys use doctrinal legal research as an instrument in legal analysis.
- It provides an understanding of development and understanding of laws.
- The method provides rational reasoning to law and also highlights ambiguities in law.
- It helps in incrimination of legal knowledge.

PITFALLS OF DOCTRINAL LEGAL RESEARCH

- Most considerable challenge in doctrinal legal research is availability of reliable data. It is the duty of the researcher to locate reliable data and conduct a competent research.
- It is frequently seen that fundamental social action differs from legal standard, making doctrinal legal research arbitrary.
- Doctrinal legal research is often referred to as “trivial doctrinal examination” as on instances legal system’s financial, social and political significance is not taken into consideration.

CONCLUSION

The objective and philosophy of doctrinal researcher has to be the same as that of sociological jurisprudence, that is, social engineering through law. Law society research cannot thrive on a weak infrastructure base of doctrinal type analyses of the authoritative legal materials.^{xv} Convergence rather than rivalry between the doctrinal and non-doctrinal socio legal research could only be the best approach to tackle with burning problems in the legal field. Both legal research methods should complement each other's limitations where applicable. Legal issues coupled with manifold of the social facts regarding economy, environment, culture, psychology, information technology, religion and such are studied while conducting socio-legal research. To conduct such studies, proper foundation of doctrinal analysis of statutes,

legal principles and case laws from authorities can only be supplied through the problems.

The socio-legal impact study of law on the basis of public opinion can bring practical world problem to the policymaker's sight. But to make the public opinion mature, the foundation again could be doctrinal research outcomes. Good opinion formation always depends on how one has acquired right information about the subject matter. Doctrinal legal researches give inputs for public to reach at well-informed decisions, resulting in mature and right public opinion. The depository knowledge generated from doctrinal legal researches could be basis for public opinion formation on legal reforms, impact of particular law and those public opinions can be brought as data through the empirical studies. To conclude, lots of good things can be generated harmonizing doctrinal and non-doctrinal legal research methods when it comes to taking the legal scholarship at new height or solving the legal problems in real life situation.

ENDNOTES

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- ⁱ S.R Myneni, *Legal Research Methodology*, Allahabad Law Agency, India (1st edition), (2016), 16
- ⁱⁱ Significance and relevancy of Doctrinal Research in Modern law and Justice' (2014)
<https://www.studymode.com/essays/Significance-And-Relevancy-Of-Doctrinal-Research-55442354.html>
accessed on 28 October 2021.
- ⁱⁱⁱ Black's Law Dictionary (9th edition) 2009
- ^{iv} *Id*
- ^v Ian Dobinson and Francis John, *Qualitative Legal Research in Research Methods for Law*, Edinburg University Press 18-19 (Micheal MacConville & Wing Hong Chui eds, 2007)
- ^{vi} Paul Chynoweth, *Legal Research in the Built Environment: A Methodological framework*, in advanced research methods in *The Built Environment*, Wiley- Blackwell, UK, 29 (Andrew Knight and Les Ruddok edition 2007)
- ^{vii} *Id*
- ^{viii} H.L.A Hart, *The Concept of Law*, Clarendon Press, Oxford, UK (1961), *supra* note 8 at 30
- ^{ix} <https://blog.ipleaders.in/all-about-doctrinal-and-non-doctrinal-research/> accessed on 30 October 2021
- ^x Hutchinson and Duncan, *supra* note 4, at 85
- ^{xi} *Id* at 97
- ^{xii} *Id*
- ^{xiii} Rob van Gestel and Hans-W, Micilitz, *Revitalizing Doctrinal Research in Europe: What About Methodology?* Abstract (European University Institute Italy, EUI Working Papers La, 2011/05, 2011)
- ^{xiv} Jain *supra* note 5, at 77
- ^{xv} Jain *Supra* note 5 at 77